

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
February 23, 2016

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Mahoney at 9:14 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Sean Mahoney  
Vice Chair Louis Abrams  
Mr. Kimo Keawe  
Mr. Roy Ho

Absent and Excused:  
Mr. Wayne Katayama

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Marisa Valenciano, Jody Galinato; Deputy County Attorney Jodi Higuchi-Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Prior to the start of the meeting, Council Administrative Assistant Eddie Topenio gave the Oath of Office to reappointed Commission Member Louis Abrams.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Mahoney called the meeting to order at 9:14 a.m.

**ROLL CALL**

Planning Director Michael Dahilig: Commissioner Ho?

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Abrams?

Mr. Abrams: Here.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Katayama? Chair Mahoney?

Chair Mahoney: Here.

Mr. Dahilig: Chair, you have four (4) members present.

### **APPROVAL OF THE AGENDA**

Mr. Dahilig: Next on the agenda is the Approval of the Agenda. Mr. Chair, we would recommend holding the agency hearing and action first, after Receipt of Items for the Record, on Item F.2.b., which is the Class IV Zoning Permit Z-IV-2016-8, Use Permit U-2016-7, and Special Permit SP-2016-3. This is the Anaina Hou Land Company's school proposal. If that can be handled actually...probably...yeah, right after Receipt of Items for the Record, just to clear that off the agenda and get the kids to school. We would also recommend handling, after Hearings and Public Comment, Item I.1. This is my petition to modify or revoke the Coco Palms' permits. If that can be handled immediately after the completion of the Hearings and Public Comment period. And then if you could move Item I.3., which is the informational presentation relating to the General Plan Update, if that can be moved to the end of the agenda this morning. And then Item H.1., relating to Executive Session, will be called as needed in the event that the Commission needs some guidance.

Chair Mahoney: Okay. Do we have a motion to approve the amended agenda?

Mr. Abrams: So moved.

Mr. Keawe: Second.

Chair Mahoney: Moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0.

### **MINUTES of the meeting(s) of the Planning Commission**

Meeting of January 12, 2016

Meeting of January 26, 2016

Mr. Dahilig: Thank you, Mr. Chair. We do have two (2) meeting minutes for approval this morning. These are the meeting minutes of January 12<sup>th</sup> and 26<sup>th</sup> of this year.

Mr. Abrams: Move to approve minutes of January 12<sup>th</sup>...do you want to do both or one? Both?

Chair Mahoney: Both, yeah.

Mr. Abrams: Both. 12<sup>th</sup> and 26<sup>th</sup> of January.

Mr. Ho: Second.

Chair Mahoney: Moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item E, Receipt of Items for the Record. We do have, I guess, a supplement that has been distributed related to additional Supplement No. 2 to the Director's Report, as well as a letter from new counsel for Coco Palms Hui and that has been distributed.

I guess we would ask that the Commission receive these items for the record.

Chair Mahoney: Chair will entertain a motion to receive.

Mr. Abrams: Move to receive.

Mr. Ho: Second.

Chair Mahoney: Moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0. Okay, items are received for the record.

### **HEARINGS AND PUBLIC COMMENT**

#### **New Agency Hearing**

Class IV Zoning Permit Z-IV-2016-8, Use Permit U-2016-7 and Special Permit SP-2016-3 to operate and construct a middle/high school facility on a parcel situated along the mauka side of Kūhiō Highway in Kīlauea, approx. 900 ft. south of the Kalihiwai Road/Kūhiō Highway intersection and further identified as 5-2723 Kūhiō Highway, Tax Map Key 5-2-017:028, and affecting a portion of a larger parcel approx. 15.17 acres in size = Anaina Hou Land LLC. POSTPONED 1/12/16.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.2.b., per the amended agenda. This is Class IV Zoning Permit Z-IV-2016-8, Use Permit U-2016-7, and Special Permit SP-2016-3. This is to operate and construct a middle school/high school facility on a parcel situated along the mauka side of Kūhiō Highway in Kīlauea, approximately 900 feet south of the Kalihiwai Road/Kūhiō Highway intersection and further identified as 5-2723 Kūhiō Highway, Tax Map Key 5-2-017 Parcel 28, and affecting a portion of a larger parcel approximately 15.17 acres in size. The applicant here is Anaina Hou Land LLC. This was postponed on 01/12/16 due to posting issues, and there was a report that was previously received by the Commission on 02/09/16.

Mr. Chair, the Department would recommend opening the agency hearing at this time for this application.

Chair Mahoney: Any member of the public care to testify on this agenda item?

Mr. Dahilig: Mr. Chair, we have, I believe...one (1), two (2), three (3), four (4), nine (9)...eleven (11) individuals that have signed up to testify on this agenda item. Start with Larry Rivera. This is on the school.

Chair Mahoney: Could you state your name for the record, please?

Larry Rivera: Aloha Kakahiaka. Good morning, everybody, and Aloha!

Audience: Aloha!

Mr. Rivera: I can't believe what's going on here. I worked (at) Coco Palms (for) sixty-four (64) years...

Chair Mahoney: Mr. Rivera, just to let you know, this is going to be on the school item.

Mr. Rivera: I can't hear what you're saying. I'm a recovering war veteran and I cannot hear you.

Chair Mahoney: Okay.

Mr. Rivera: I heard my name, so that's why I came up.

Chair Mahoney: Alright.

Administrator Furfaro explained the situation to Mr. Rivera.

Mr. Rivera: Oh, okay. Then I'll have to leave because I have to do a tour at Coco Palms right now. Several buses come there and I'm going to tell them the beauty of Coco Palms. And I hope that you think hard about giving them a chance, please. In God's name, please bring Coco Palms back. Amen.

Chair Mahoney: Thank you.

Mr. Dahilig: Okay. Sharon Goodman, followed by Robyn Botki, followed by Parker Croft.

Chair Mahoney: Could you state your name for the record, please?

Sharon Goodman: Sharon Goodman. I am one (1) of the co-Directors of Pu'ukumu School. And I just want to say that enthusiastically, with the support of our students here, present, that we see this as a gift from Bill and Joan Porter; as really a gift to what the north shore residents had asked for. So they have been so kind to give us this gift of building a school. I would like to say

that about Pu‘ukumu School, we can be a wonderful...we are a wonderful asset to the community. We stand for character and community and academic success. Right now, we are using teachers from the community for some of our electives, and we want to give back as a part of our character education programs, so we plan to work in the community as service. So I think it's a wonderful way to build community, and I know that there's a backing from the north shore. Thank you for your consideration today. Thank you.

Chair Mahoney: Thank you.

Mr. Dahilig: Robyn Botki, I believe.

Robyn Botkin: Botkin.

Mr. Dahilig: Botkin, followed by Parker Croft, followed by Thomas Daubert.

Chair Mahoney: Could you state your name for the record, please?

Ms. Botkin: My name is Robyn Botkin, and I am the other co-Director of the Pu‘ukumu School. I just wanted to thank you all for your consideration today. I will mirror what Sharon Goodman has shared with you in that I do feel...and I do feel a tremendous amount of support from our community around the main objectives of the school. And that would be to create a school that supports character, community, and academic success. It is our goal to really become an intricate part of the community, to work with our students to teach them of the value of their home, what is unique about being a Kaua‘i student versus being a middle school or high school student somewhere else, and how they can be active members in preserving their land, their culture, and everything around them. So we humbly ask you to please consider this application today, and mahalo for your consideration.

Chair Mahoney: Thank you.

Mr. Dahilig: Parker Croft, followed by Thomas Daubert, followed by Jack Gushiken.

Parker Croft: Aloha. My name is Parker Croft, and my wife and I farm mauka of this site, up on Kalihiwai Ridge. We have raised four (4) children, and we would have been very grateful to have had a facility on the north shore. The whole north shore really deserves and needs a facility like this so that they can have good education at this level and not have to travel a long distance. From what I've observed, these...the Porter's and the Staff of the school are doing an excellent job. I'm grateful and honored to serve as the architect for this project, and I'll be happy to answer any technical questions later on. But as a parent and a neighborhood member and a resident, Kalihiwai is truly blessed to have the Porter's do all those good things that they have done, and this is just an extreme example of their generosity and their wisdom. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Thomas Daubert, followed by Jack Gushiken, followed by Bob Smith.

Thomas Daubert: Good morning. My name is Thomas Daubert, and I'm the Executive Director for Anaina Hou Community Park. On behalf of our organization, I'm very pleased to support...we are very pleased to support the Special Use Permit for the Pu'ukumu School facility. As the landowner of the school's proposed site, we are excited to extend the lease to this new middle and high school, and to welcome them to our campus on the north shore. The Anaina Hou Board Directors voted unanimously at its board meeting on December 9<sup>th</sup> in favor of the school project as our team recognized the value that this organization brings to our community and the value that the two (2) organizations bring to be able to work together to serve our community in a really beautiful way. So again, on behalf of Anaina Hou, I wish to fully embrace and support the Pu'ukumu project, and appreciate your time this morning. Thank you.

Chair Mahoney: Thank you.

Mr. Dahilig: Jack Gushiken, followed by Bob Smith, followed by Kristin Hall.

Jack Gushiken: Good morning. My name is Jack Gushiken, and I'm a lifetime resident of Kīlauea. I have sent in a written statement on January 12<sup>th</sup>, you know, the postponed meeting. I highly recommend that this school be in operation because I've seen it operate and it's a high-level type of education. There is no limit to what the child can do at this type of school. Another thing that I see that, you know, at this level, the high school level, some of our public high schools, there's no parking already, as far as cars, yeah? Most of these kids will be driving on the road. In Kīlauea, you know, that area I think will cut down the traffic heading towards east side and most of the traffic will be maintained in the Kīlauea area. Okay, thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Bob Smith, followed by Kristin Hall, followed by Jake Lambden.

Bob Smith: Hi. My name is Bob Smith. I'm a retired Pastor and resident of the north shore. I'm also a board member for the Pu'ukumu Schools. I've been working along with a team of folks at Pu'ukumu to put together their vision of what this school will be and become. I'm here to tell you that I'm really impressed with the high caliber of the leadership, the heart, the expertise, the knowledge, and the vision that they have for bringing an exceptional resource to the north shore, which is, as other people have already said, really needed. When you look at the Staff and the people who are working and the kids and the caliber of the kids, it's an inspiration. So the licensing or the permitting process for this seems, to me, to be something that you need to support because what will be happening is...I invite you to consider that your approval will enable Pu'ukumu to have a significant and positive impact, not only on these kids and Staff, but on the whole community of the north shore because of the quality of education that they will be receiving and their interaction with the community. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Kristin Hall, followed by Jake Lambden, followed by Mary Paterson.

Kristin Hall: My name is Kristin Hall, and I have two (2) students at Pu'ukumu. First of all, I want to thank you for moving us up in the agenda. My dad is in planning on the mainland, and I spent many, many times at meetings like this and it taught me a lot. I appreciate you letting them be here and also for moving them up so that we can get them back to class. I just...I want to just really encourage the approval of this. I'm actually a huge proponent of...an advocate for public schools and it's nothing...I don't think this takes away anything from public schools. I think that all kids learn and thrive in different environments, and I think that to have options and places for kids to thrive is a great thing. Pu'ukumu has always taught about giving back to the community and being a part of the community, along with the education. I've always really appreciated the fact that they really balance that out. I just...we really have felt it's definitely a family and 'ohana feeling there, and I know that these kids are taught respect and no kids are just cast aside that perhaps might need extra help and everything else. I mean, they really work with each individual child and meet their need, and I think that is a benefit to the community in the long run because it's a very positive thing to have kids learning, not just the reading, writing, and arithmetic as we used to do, but also just a character education and the commitment and the respect of their community. So I just appreciate the consideration, and I thank you for your time today. Thanks.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Jake Lambden, followed by Mary Paterson, followed by Felicia Cowden.

Jake Lambden: My name is Jake Lambden. I'm a very happy student at Pu'ukumu School. I support the building of the high school, and I look forward to going there.

Chair Mahoney: Thank you for your testimony. (Applause) Okay, so we can hold the applause.

Mr. Dahilig: Mary Paterson, followed by Felicia Cowden.

Mary Paterson: Aloha and thank you, Commissioners. My name is Mary Paterson. I've been a resident of the north shore for almost thirty (30) years. The north shore has grown considerably, as everybody knows, and our kids are not being served in their community with either public education or even private education. So I would really encourage...at the middle school and high school level I'm talking about...I would really encourage you to support this initiative that's before us and to allow them to build the school for the middle school and high school students. I, myself, was a very slow learner in school, and I would have benefited tremendously from this type of education that they are providing because the blended learning takes, not only the core curriculum, but it allows the peer-to-peer learning, it allows the teachers and it allows internet learning. You can learn many different varieties. And I, myself, would have benefited greatly from that type. I also really encourage everyone to think of how much this will save and being able to keep the kids in our community from having to drive to Kapa'a, which they currently have to do, and it also encourages local jobs. I'm on the board of the Kaua'i North Shore Community Foundation, and our whole board supports this, and we are very, very grateful to the Porter's for their contribution and their vision. So I encourage you to pass this. Thank you so much.



Chair Mahoney: Thank you.

Mr. Dahilig: Felicia Cowden.

Felicia Cowden: I'm Felicia Cowden, and I'm going to speak directly to land use. We've heard many people say, you know, a lot of good things about this school. I was the co-Chair of the Youth Council, I was the Chair of the School Community Council for Kapa'a High, and for... I remember we had a...our kids needed a school program almost thirty (30) years ago. This has been something that has been sought for a long time, and this particular plot of land was commercial use. It was permitted as commercial use for a long time, and the Porter's, they downgraded it, but really, in the General Plan and the Community Plan, this was seen as an area that would be high-use. In all the school opportunities that we've looked at for both a public high school and any kind of place where we could put a school, this general area, normally it's across the street that's been looked at as a space because it had been commercial on the mauka side, but this is a great spot because of its proximity to the town. We probably have the highest density of young people right there in Kilauea, so it can be bike rides, it can be walks. The way that the future road is coming or is intended to come, it brings it right to that spot. Another really excellent thing is its proximity to the public bus. That stops the road traffic because these kids can easily get a bus pass. I have had my own program that was designed for Kapa'a High called "Akamai Learning" that I ended up doing as an alternative middle school. I have encouraged my students to ride the bus and they typically do. It teaches very good habits in terms of how our public transportation system works. I am very excited to be helping Pu'ukumu with the structure of how they are educating kids because I think it is really appropriate for many of our children who really don't like to sit still all day long, honestly; that's actually a lot of kids.

And then I want to speak to the possible outcome of like well, what if the school doesn't continue to hold on? Because we see that all the time; we have Kahili Mountain Park, we have Kula School. Kula School is where they are right now. There are many other small schools that are trying to open up somewhere, so it has potential well beyond its time. I know that Kahili Mountain Park...there are schools that are trying to go into there. This is a windfall and a blessing from the Porter's, and this is something that's been wanted for decades in the location that it's been wanted for, and it's appropriate. So, thank you, thank you, thank you. My guess is this is going to be a pass, but thank you to the Porter's. Thank you to Pu'ukumu. Thank you to this Commission. Mahalo.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Chair that is all I have signed up to testify this morning. We do have written testimony that has been submitted, that I would like to state for the record, from Margaret Gil in support, Chris and Tricia Rine in support, Alison Chuang in support, Evans McGowan in support, Sky Asher in support, Kayti Lathrop in support, Jessi Wright in support, and Chancellor of Kaua'i Community College Helen Cox in support. Mr. Chair, the Department would recommend making a final call for any further oral testimony at this time.

Chair Mahoney: Is there any other member of the public that would like to testify on this agenda item? Seeing none.



Mr. Dahilig: Seeing none, Mr. Chair, the Department would recommend closing the agency hearing at this time.

Mr. Abrams: Move to close the hearing.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded to close the hearing. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0. Hearing closed. Thank you.

## **NEW BUSINESS**

Class IV Zoning Permit Z-IV-2016-8, Use Permit U-2016-7 and Special Permit SP-2016-3 to operate and construct a middle/high school facility on a parcel situated along the mauka side of Kūhiō Highway in Kīlauea, approx. 900 ft. south of the Kalihiwai Road/Kūhiō Highway intersection and further identified as 5-2723 Kūhiō Highway, Tax Map Key 5-2-017:028, and affecting a portion of a larger parcel approx. 15.17 acres in size = Anaina Hou Land LLC. POSTPONED 1/12/16.

Mr. Dahilig: Thank you, Mr. Chair. And as stated per the amended agenda, let's move to Item M.1. to conclude action on this particular item. Dale is the Planner for this permit, and he'll be making the presentation on behalf of the Department.

Staff Planner Dale Cua: Thank you, Mr. Chair and members of the Commission. At this time, I would like to just summarize the Director's Report. What you have before you is to consider...it's a consideration of Class IV Zoning Permit, Use Permit, and Special Permit to allow the applicant to operate and construct a middle/high school facility. Project Description and Use. As represented, the extent of the improvements will include construction of a two-story structure, approximately 21,500 square feet in size, and off-street parking. The structure will be constructed of steel-framing with galvanized metal roofing at a maximum height of twenty-five (25) feet. Applicant has indicated that the school is designed to accommodate approximately 180 students and up to fifteen (15) faculty members. Additionally, they will provide a total of seventy-five (75) off-street parking stalls for the school facility and it will be integrated into the Anaina Hou Community Park. The agency comments have been attached to the Director's Report. At this time, that concludes the Director's Report.

Chair Mahoney: Are there any questions for the Planner by members of the Commission? Is there a representative for the applicant present? Could you state your name for the record, please?

Jennifer Luck: Yes. Good morning. My name is Jennifer Luck, and I'm the representative for Pu'ukumu School and for Anaina Hou, as well as the Porter Trust, who is the funder of the school.

Mr. Keawe: Hi. Good morning.

Ms. Luck: Good morning.

Mr. Keawe: Jennifer, can you tell me a little bit about your admissions policies and how you screen students? I read through the material that was submitted and it was based on a character-based education, so how do you go about selecting students for your school?

Ms. Luck: I might actually defer to Robyn Botkin, who's the co-Director, who can speak probably a little bit better than I do, but they do have a standard admissions process that they adhere to. Robyn, if you want to come up and...? Excellent. Come on up.

Chair Mahoney: Could you state your name for the record, please?

Ms. Goodman: Sharon Goodman, and I'm co-Director of Pu'ukumu. I'm in charge of admissions, so to answer the question, how do you go about selection? Is that the question? We see each student with their parents and we really are looking if it's a good fit. We want to make sure that we are the right school for them, as well as are they able to do what we are hoping to do, which is abide by our character education piece, they honor the culture that we are representing, and also we look at their past grades and we do an assessment to see if we truly can meet their needs because we may not be able to meet every child's needs and we would want to know that. We have a wonderful blended learning program and differentiated learning, which really...our teachers are wonderful to try to teach where a student is at, but if it's too far in the direction of too low, then we will have to identify that and know that we are not a good fit because we can't teach in that range. So we also conclude with a personal interview with the student, and they fill out their own interview; kind of a "who I am" statement of their character and what they love and what they would like to do and we see if they are willing to be a part of this community. They have a school visit, and after the assessment we send out a letter of acceptance when it's true; when we are able to do that.

Mr. Keawe: One (1) more...another question. Do you offer any kind of scholarship assistance to students who may not be able to afford the tuition?

Ms. Goodman: Yes, and we hope that we will have more in the future. We have a very giving community, and we hope to increase that, but right now we have...we do have one (1) scholarship fund that is being used and will continue. Also, on top of that, the important thing to know is that the Porter's are really, in a sense, subsidizing our tuition big time because they are probably paying...Robyn, you'd say a third?

Ms. Botkin: 50%.

Ms. Goodman: 50%. So they are paying 50...the parents are paying 50% less for tuition there. Anything you wanted to add?

Ms. Botkin: No. I'm Robyn Botkin. I'm the other co-Director. I'm sorry about that, but I just wanted to note that we are a reduced-tuition school and will attempt, always, to maintain that

through scholarship and development programs. We do obviously charge a tuition, but it is less than a third of any other private school on the island, and it is less than 50% of what it actually costs us to educate each student.

Ms. Luck: Tuition is \$350 a month, so it's...

Mr. Keawe: \$350 a month?

Ms. Luck: \$350 a month, which is less than a lot of daycares, or preschools even, in the area.

Mr. Keawe: So from the standpoint of the organization itself, Jennifer, that school will continue in perpetuity?

Ms. Luck: Yes. Yes, absolutely. The Porter's founded the school in 2013 and are the predominant funders of the school, currently, but the school is building out a Board of Directors and a development program and will supplement tuition with grants, but the idea is, and even the structure of the school through the blended learning model is so that tuition can remain at an affordable level because you know, certainly there's the public school option, and then there's Island School, but Island School is unaffordable for most families here on this island, so...it's a fantastic school, but does cost quite a bit, so the model of Pu'ukumu is very much...and the Board and the Staff are very much, as well as the Porter's, committed to keeping tuition as low as possible.

Mr. Keawe: Good. I think the concern would be, you know, we don't want to see another Kula School where it was great for a few years and kids get all excited, and they close the school.

Ms. Luck: Right. And we are trying to learn from both the successes and the challenges of that model, and how we can do things differently to ensure that the school is around for the long-term. So you know, we are working very hard to ensure that that's the reality.

Mr. Keawe: Thank you.

Ms. Luck: Also, I wanted to make sure and mention, too, the reason that we are seeking a Special Use Permit and to build a new campus on the Anaina Hou Land is that Kula School only granted Pu'ukumu a lease for two (2) years. There were attempts to purchase that property because that would have been probably a bit easier just to purchase and renovate Kula School. There were multiple attempts with the landowner to purchase that and they were all turned down, so at this point, there does need to be a permanent home for the school.

Mr. Keawe: Good. Thank you.

Chair Mahoney: Thank you. Any other questions?

Mr. Ho: Dale, what is the surrounding property to this...is it Ag zoned? Ag/Open zoned?

Mr. Cua: Yes. The area mauka of the highway is predominantly Agriculture zoned property. There is urban development further south. It's a residential subdivision, but it's a relatively small one, but the areas, in this area, primarily is Agriculture zoned.

Mr. Ho: Their immediate neighbor would be Ag zoned?

Mr. Cua: Yes.

Mr. Ho: Ag/Open? Is there any restriction on noise when you...if the landowner decides to work his land, Ag portion of it? Any noise restrictions that...hours of operation that he has to conform to?

Mr. Cua: I'm not aware of any at this time. I can tell you through the Use Permit, you know, the applicant did designate their hours of operation, and through the Use Permit process, for this application, you could restrict operation times in order to minimize noise impacts to the surrounding properties.

Mr. Ho: Is it Ms. Luck? Jennifer?

Ms. Luck: Yes.

Mr. Ho: The question was...you are bordered by Ag land property and if the owner decides to work the property, there might be some noise for you, some dust. Are you going to handle that?

Ms. Luck: Yes, I don't think that will be a problem at all. In fact, the school is really intent on partnering with both Anaina Hou and you know, Waikoa, and creating some programs with both of those where they get the kids out on the land and teaching them about farming and agricultural work and all of that, so I don't think that any of the noise would be an issue.

Mr. Ho: Just an off question, I believe there's a...the Water Department is going to impose on you a pretty heavy facility charge to bring a waterline to you for your water service; something like you have to put in a 12-inch line, 4,000 feet. Is that a financial thing for you?

Ms. Luck: No, that should not be an issue.

Mr. Ho: You can handle that?

Ms. Luck: Well, depending on the...I mean, yes, we would have to. If that's what we have to do, then that's what we would have to do.

Chair Mahoney: Could we hear the recommendations from the Planner, please?

Mr. Cua: Sure.

Ms. Luck: Audience members wanted me to make sure and mention that the community are the neighbors here, and so they have come out, you know, greatly in support of this project. We

received support from Kīlauea Neighborhood Association, from the community members that are sitting behind me, of course, and then Waikoa, the land that's contiguous with this property is owned by the Porter Trust who are, of course, the founders and the funders of the school.

Chair Mahoney: Okay. Could we have the report from the Planner, please?

Mr. Cua: Sure.

Chair Mahoney: The recommendations.

Mr. Cua: Before we move on to the conclusion and recommendation of the report, I just wanted...the Department wanted to state that this application is for the consideration of the school and that there have been possible representations that the property may be further developed, and if...in the event that the property is further development that consideration should be made, such that a master plan will be prepared for the subject property. So now moving on to the conclusion.

Mr. Cua read the Preliminary Conclusion and Preliminary Recommendation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: And that concludes the Department's recommendation.

Chair Mahoney: Thank you. Are there any questions for the Planner on the conditions? Does the applicant understand the conditions as read?

Ms. Luck: Yes.

Chair Mahoney: Any questions? You willing to comply with all conditions?

Ms. Luck: No questions.

Chair Mahoney: If I could ask the Planner, when you opened up your statement about a master plan, could you review that part again, please?

Mr. Cua: Sure. It has just been represented that because it is such a large parcel, the parcel may be further developed, and if it is further developed, and possibly urbanized, that a master plan should be prepared for the entire property. And it is an opportunity for reviewing agencies to evaluate the proposal.

Chair Mahoney: Could that be incorporated as a condition? Or not necessarily?

Mr. Cua: Not necessarily. It is more of a disclosure.

Mr. Dahilig: I think we have ongoing discussions with the landowner because, you know, the Porter Trust has been very generous in providing...it's a flex space, essentially, across the street for a lot of innovative things, and so mainly we have a permit for a theater on the site already,

and a gathering place. We have a permit for a mini golf course for the community. This is another thing that's coming on there, so you know, as Felicia mentioned, you know, this area was looked at as a secondary gathering space for the Kīlauea Community and the Porter's have generously allowed that space to be used as such. I think just from a permitting and usage standpoint, we need to ensure that we start aligning what our laws and codes are beyond these Special Permits for, you know, once they start looking at other things beyond this. I think we've had those conversations with some of their, I guess, representatives, and so I'm sure we will be having those conversations, as well as...as the General Plan Update continues, we'll be having that outreach.

Chair Mahoney: Okay, thank you.

Mr. Ho: Mr. Dahilig?

Mr. Dahilig: Yes.

Mr. Ho: If they wish to expand the school, it would be just a matter of permitting?

Mr. Dahilig: It depends on the scale. So you know, we are looking at this because of the size and the complexity of the proposal, we believe it's unique enough that we can say okay, it meets that threshold of using the State Special Permit and our Use Permits. If they started...wanted to put together a 200-acre campus with a football field and a gymnasium and these types of things, then we are going to have to start talking about that, but for now, they are a fledging school that is just starting off with their facilities, so we believe it falls within the parameters of that unique evaluation that...and is warranted for approval.

Chair Mahoney: Any further questions? Chair will entertain.

Mr. Keawe: I move to approve Class IV Zoning Permit Z-IV-2016-8, Use Permit U-2016-7, and Special Permit SP-2016-3 to operate and construct a middle and high school facility.

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0.

Ms. Luck: Thank you so much. We really appreciate your time and consideration. Thank you. (Applause)

Chair Mahoney: We are going to take a short caption break.

The Commission recessed this portion of the meeting at 9:54 a.m.

The Commission reconvened this portion of the meeting at 10:10 a.m.

Chair Mahoney: Call the meeting back to order.

## **HEARINGS AND PUBLIC COMMENT (Continued)**

### **New Agency Hearing (Continued)**

Special Management Area Use Permit SMA(U)-2016-2 to construct a single-family residence on a parcel situated at the terminus of Nalo Road in Po'ipū, situated approx. 600 ft. mauka of its intersection with Hoone Road, further identified as 2289-A Nalo Road, Tax Map Key 2-8-027:023, and containing a total land area of 20,000 sq. ft. = POP Acquisition LLC.

Mr. Dahilig: Thank you, Mr. Chair. We are on Item F.2. This is the new agency hearing for Special Management Area Use Permit SMA(U)-2016-2. This is to construct a single-family residence on a parcel situated at the terminus of Nalo Road in Po'ipū, situated approximately 600 feet mauka of its intersection with Hoone Road, further identified as 2289-A at Nalo Road, Tax Map Key 2-8-027 Parcel 23, and containing a total land area of 20,000 square feet. The applicant is POP Acquisition LLC. There is a Director's Report that has been received for this particular application, Mr. Chair, and the Department would recommend opening the agency hearing at this time.

Mr. Chair, we do not have anybody signed up to testify on this particular agenda item. The Department would recommend making a final call for any testimony for agency hearing at this time.

Chair Mahoney: Is any member of the public here to testify on this agenda item? Seeing none.

Mr. Dahilig: Mr. Chair, given the lack of testimony, the Department would recommend closing the agency hearing.

Mr. Keawe: Move to close the hearing.

Mr. Abrams: Second.

Chair Mahoney: It's been moved and seconded to close the agency hearing. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 4:0.

### **Continued Public Hearing (NONE)**

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.3. This is Continued Public Hearing. We have none for this morning.

### **New Public Hearing**

Zoning Amendment ZA-2016-3: A bill for an ordinance Amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Definitions = County of Kaua'i, Planning Department.



Mr. Dahilig: Item F.4., New Public Hearing. This is Zoning Amendment ZA-2016-3. A bill for a zoning amendment amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Definitions. The applicant is this Department and there is a Director's Report for this matter. Mr. Chair, the Department would recommend opening the public hearing at this time.

Chair Mahoney: Is any member of the public here to testify on this agenda item? Seeing none.

Mr. Dahilig: Mr. Chair, seeing the absence of any public testimony during this public hearing, the Department would recommend closing the public hearing.

Mr. Abrams: Move to close the public hearing.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.5. This is all remaining testimony pursuant to Hawai'i Revised Statutes Section 92 or the Sunshine Law.

Mr. Chair, I do have individuals...individuals wanting to testify on Item I.1. This is the Coco Palms Hui matter. I have four (4) individuals that have signed up to testify.

Chair Mahoney: Okay.

Mr. Dahilig: William Fernandez, followed by Jon Pang, followed by Michael Lam. William Fernandez.

Chair Mahoney: Could you state your name for the record, please?

William Fernandez: Mr. Chairman and Planning Commission, my name is William J. Fernandez, keiki o ka 'āina o Kaua'i. In November of 2015, I attended the dedication ceremonies for Coco Palms and I heard the Mayor say that he had a dream that was being fulfilled; that the wonderful place that he knew when he was younger was going to be revived and rebuilt. This is a dream that I've had for years. But now I see what I consider to be a breaking of this dream. It is a travesty to believe that you may pull out the rug from under this development of Coco Palms and prevent that facility from coming back to life. It's also a travesty to realize that Forbes Magazine's claim that this is one of the most difficult jurisdictions to do business in may be true because of the road blocks that are being placed before this development. It's also a travesty that you have found two (2) foolish developers who are willing to face the hydra of difficulties that are involved with the replacement of Coco Palms. As Ross Kagawa said today, it could cost a billion dollars to do this job, and yet you have these two (2) men...by the way, according to Ross, this is the second...third group of developers that have come forward...who are willing to take off your hands, this burden that has been in existence for

twenty-three (23) years, at no cost to the County of Kaua'i, but as a plus to the County of Kaua'i because you will be receiving land, you will be receiving additional tax dollars. No, it's a further travesty that if you were to revoke this permit, you would place this whole Coco Palms project into a quagmire of future troubles, litigation, maybe another twenty-three (23) years before there is some resolution, and at what cost? Who will pay for this?

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Mr. Fernandez: Thank you. Mahalo.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Pang and Mr. Lam, you are on this list though I understand you'd like to testify when the agenda item is called.

Unidentified Speaker: Yes.

Mr. Dahilig: Okay. Ken Taylor.

Ken Taylor: Chairman and members of the Planning Commission, Ken Taylor. I'd like to remind each and every one of you, and I don't think any of you were here a couple years ago when this process started, but these folks came in and said they understood the conditions that needed to be addressed. They were willing to take it on. They made a lot of promises to the community, to the Council. And here we are today, lagging behind, like always, then crying the blues that well, you gotta just give me more time, you gotta give me more time. I'm sorry. I have to agree with the recommendations from the Planning Director to revoke the applicant's, Coco Palms Hui LLC, permits and issue an order to show cause. It's not easy to come to this position, but you know, when developers come forth and they make promises and they don't keep them, it's time to say, you know, that's it. Unfortunately, over the years we've seen too many times where the developers come in and cry about this and that and things are tough. The only reason things are tough is because we want the best for Kaua'i. I think that the Planning Staff has done a tremendous job in doing exactly that and I think that it's just time to start being a little tougher on the developers and say hey, you make the promise, you keep it. If you don't keep it, we pull the rug. And I don't think that's being harsh. I think it's being...bringing reality to the table and that's where it should be. So I hope and recommend that you approve the recommendations from the Planning Director. Thank you.

Chair Mahoney: Thank you for your testimony.

Administrator Furfaro left the meeting at 10:18 a.m.

Mr. Dahilig: That's all I have signed up to testify. I'd recommend making a call for any final testimony.

Chair Mahoney: Is there any other member of the public that wishes to testify on this agenda item at this time? Please come forward and state your name for the record.

Mehana Vaughan: ‘Ano‘ai me ke aloha. My name is Mehana Blaich Vaughan. I’m a Kīlauea community member. I’m a professor at the University of Hawai‘i at Mānoa, Natural Resource Management, testifying today as a private individual. I’d also like to support the motion here today for two (2) reasons. The first is just the cultural significance of the area. Coco Palms (is) located at the mouth of Wailua Nui Aho Ano, which is some of the highest density of heiau in all of Hawai‘i, as well as on our island of Kaua‘i, and seat of some very important rulers of our island where they chose to rule from and to have their homes, including Deborah Kapule. The fish ponds there...it’s just a very, very important culturally and ecologically significant site, and it’s not being honored in its current state as we all know, which is a concern.

But the second reason also is the land use process. This permit has come before this body so many times, and I think that we talked about the quagmire of the planning process and I think that comes when conditions aren’t honored and when things are not...do not happen in the way that they are supposed to. And I think that this Commission has spent enough time deliberating on this matter with much consideration, and I think it is a bit of a mockery of the process for the developer not to have met the conditions. So I think that this is a very proper, well-thought-out motion by the Planning Department. I’d like to support it and I think it also opens the door for other opportunities on that property for public uses, for cultural uses as a cultural park, as a community facility, as a learning facility, a training center, things that cannot happen under the current conditions. That doesn’t mean that it’s incompatible at all with use as visitor accommodations in some form, that’s been a big part of the history of the property as well and for many of our community members, but I think the movement by the current developer and the current state are unforgiveable and do not justify continuing under the present circumstances. Thank you so much for your time and all the time you give for every issue that you consider, and just for serving our public and our community and our island of Kaua‘i. Mahalo.

Chair Mahoney: Thank you for your testimony. Anyone else? Seeing none.

## **GENERAL BUSINESS MATTERS**

Planning Director Michael A. Dahilig’s Petition to Modify or Revoke Applicant Coco Palms Hui, LLC’s Permits and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Michael A. Dahilig; Notice of Meeting; Certificate of Service for Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 = Coco Palms Hui, LLC.

Mr. Dahilig: Okay, Mr. Chair, let me go ahead and call the item. Item I.1. This is Planning Director Michael A. Dahilig’s petition to modify or revoke applicant Coco Palms Hui, LLC’s permits and issue an order to show cause and set hearing, including memorandum in support of petition, declaration of Director, notice of meetings, Certificate of Service for Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6.

Mr. Chair, this is my petition that I'm setting forth before the Planning Commission. It's very simple. In terms of procedure, this is required for us to take a look at starting the process. This is the first action that is needed to start the process for any type of modification or revocation of the permits that are currently held by the applicant on the property. We are not looking at setting forth, at this juncture, any remedy or any recommendation on what we should do. Rather, what we do know, based on the testimony from the previous status report, is that they will not meet their timelines for the permit for demolition. They have said that on the record, and we believe that warrants a discussion. Now, whether that warrants a discussion to the degree of full revocation versus can this be remedied at some point, I believe is up to a further set of discussions and deliberations before this body.

Administrator Furfaro returned to the meeting at 10:22 a.m.

Mr. Dahilig: So I'm not making any recommendation at this point before the Commission to actually ask for relief on this particular anticipated violation. I would say that given my initial petition, I would like to orally amend my request by stating that I would ask the hearing, if an order to show cause were to be set, that a hearing actually be set for April 26, 2016, rather than April 12, 2016. I believe that that's a more appropriate date for the hearing. And again, the facts are pretty simple, again, that we believe there is enough evidence out there to warrant the Commission holding a Contested Case Hearing and issue an order to show cause to the applicants why they can or cannot meet that condition of approval, and in the event that they cannot meet the condition of approval or have not met the condition of approval, what should be the appropriate remedy as imposed by this Commission. Given that, Mr. Chair, that's all I wish to state at this time, and would reserve the right to respond to any further comments by the applicant if they are called up.

Mr. Ho: Could you tell me the date again, please, Mike?

Mr. Dahilig: April 26<sup>th</sup>.

Deputy County Attorney Jodi Higuchi-Sayegusa: Okay, just to sort of frame the discussion that we'll get into now, I think that there are several questions that the Commission needs to decide. The first question will kind of be sort of like a threshold question before any of the other questions get resolved, and that's whether to issue and serve the order to show cause as to why the permit should not be revoked or modified. And the standard under the rules, under 1-12.5, is that there...whether there is reasonable cause to believe that there is currently a failure to perform, according to the conditions, and so if you folks have found that there is currently a failure, then you can set it...issue and serve that order to show cause. And again, it'd be whether to revoke or modify the permit. The other questions, if that question is reached, will be when to set it. Again, the Planning Director has clarified that the preference would be to set it the second meeting in April. I think...and then also the other question is whether to keep it before the Planning Commission. If you folks do choose to go and set the order to show cause or whether you want to have the Hearing's Officer vet and hear the...go through the Contested Case and at least the evidentiary portion of it, and then what to do with the petition to intervene, which is...we did receive by the representative from Prudential.

Mr. Ho: Jodi, we would...at the 26<sup>th</sup> meeting, we would make a decision?

Ms. Higuchi-Sayegusa: Yes. So the question is whether to set an order to cause, and that would be to set a hearing to go through and whether or not a violation exists.

Mr. Keawe: Jodi, you mentioned the failure, and the failure will not occur until the April 13<sup>th</sup> deadline. Is that true?

Ms. Higuchi-Sayegusa: Yes.

Mr. Keawe: Okay.

Chair Mahoney: Alright, so maybe for discussion purposes, if members of the Commission have any comment.

Mr. Abrams: I have one (1) question.

Ms. Higuchi-Sayegusa: Sure.

Mr. Abrams: So do you want us to decide whether or not we want to do an order to show cause before we take the intervention up?

Ms. Higuchi-Sayegusa: Yes.

Mr. Abrams: Okay. So...yeah, would we have the opportunity, then, to hear from the applicant in regards to the Director's motion?

Chair Mahoney: Could we have a representative for the applicant? Could you state your name for the record, please?

Jon Pang: Good morning, Commissioners. My name is Jon Pang, and I'm here with my partner, Mike Lam, representing Coco Palms Hui, and Tyler Greene is here for the applicant. We have been asked to help this project or this client on this project. Me in particular because I'm a Real Estate Development Attorney, and...that does real estate development and finance. At this point in time, the applicant has...is poised to close this transaction to acquire the property and to fund the necessary demolition work, as well as to complete the construction plans. So we believe that, right now, the project is poised to go forward, and we think that it's...it would be unfortunate for this Commission to take action that will cause the lender to be concerned about whether the project can proceed. The applicant has taken...has done all that they can to satisfy as many of the conditions that they are able to do at this time. You know, they have paid the County \$110,000, in addition to putting \$3 million of equity, plus their sweat equity into this project. They have fulfilled the SHPD requirements that was a prerequisite to the demolition permit that we've...that is before us, and has recently signed the workforce housing agreement with the County. Then it created the...a non-profit corporation that is dedicated to the historical and cultural preservation of the area. They engaged an accounting firm to obtain 501(c)(3) status for that corporation so it can provide the cultural and historical and community activities on

property. They will be donating a 5-acre parcel for that corporation to hold its activities, and will implement mechanisms for that non-profit to be funded so it can continue. So, the demolition permits they have...that were issued in October of last year...they have engaged the Kaua'i firm of Pacific Concrete Cutting and Coring to do the demolition, but unfortunately, the loan process has taken longer than anticipated. In representing developers, as well as lenders and borrowers for over thirty (30) years, this is not abnormal. I've closed over a billion dollars of transactions in the last two (2) years. My specialty is complex transactions and financing, so I wanted to just give you an idea of the challenges that a lender, on this kind of property, can present to a developer. You are familiar, I'm sure, with getting a loan for your home and the type of things that the lender will ask you for, the things that you think may not be necessary or to educate, but if you multiply that by a thousand times, that's what you have as a lender here. These developers have been working diligently to educate a lender in New York to understand this property; the value of it and the attractiveness of it. It's a lot of work and it's a delicate situation. Which you can imagine, the lenders have requests for their money all over the nation and they choose projects that they think will work. They will also vet the projects that...so that they work on loans that they think will close, so that is why the process takes longer. So, when you finance your house, it's already built, it's been...there's value there, there's a history to it, but in a project like this, it's very complex. It's a redevelopment of an existing site, it's a project that has had a couple of developers not able to do it, so the lenders are careful, so that's why it takes a little bit...that's why it takes longer. It's a longer process and no one really can predict or control the lender. The lender will go at their pace, they will go through their procedures, and they will ask for the information that they ask for. So in this case, the developers here have been successful. They were able to convince this lender of the merits of the project, including the widespread support of the island of Kaua'i from this Planning Commission in issuing permits to Mayor Carvalho to Planning Director Dahilig and the community in general, such as you heard from Judge Fernandez.

One of the significance this Commission should understand is the commitment of Hyatt Corporation to operate this project and to publicly permit its name to be associated with a project that is not yet built; that's not typical of Hyatt or any brand. So you have in front of you a letter from Hyatt that was written by the Regional Vice President who is in charge of development for the whole West Coast. I've worked with him on other projects and he is the person that makes the decision in Hawai'i.

So right now, you have in front of you a letter from Omega, which confirms that the lender has completed its underwriting process and has moved toward the closing phase of this loan. We were anticipating a letter from the Fund Manager, but unfortunately, yesterday, he was admitted to emergency for a heart condition. So we were not able to get something from him, but we were able to confirm that the underwriting is completed and moving to the closing phase once they are able to address or accommodate, with his health, to proceed to close this loan. The loan will include funds to acquire the property, will include funds to complete the demolition, will also include funds to complete the construction plans so that the developer can obtain the building permits.

So at this point, we think it's very important, as I tried to explain, is that where we are with the developers is very delicate. The developer...I mean, I'm sorry, with the lender is very delicate.



We would urge this Commission to continue to support this project and to, I guess, try to...within its rules, try to avoid having the lender...raising any concerns from this lender that this loan will not close or that the...well that the project will not go forward. Because if the lender feels that the project will not go forward, it will not fund the loan. And action taken by this Commission, which is important to them...they know what's going on, they are aware of the articles, and it will make it more difficult for this...the applicant to close this loan if this Commission takes steps toward revoking the permit. So that's why we request, and perhaps it should maybe be laid more formally later, but we would like this Commission to consider modifying that condition to allow the applicant to close this loan and to complete the demolition in a timely manner. Any questions?

Chair Mahoney: Questions for the applicant?

Mr. Abrams: I do. Mr. Pang, what would be your opinion in regards to now that the underwriters are done and they are proceeding to closing would be a timeframe for funding?

Mr. Pang: Well, we are hoping... Now, I've been involved in lots of loans beginning from my first deal was redeveloping the Kaua'i Surf into the...now the Marriott. I represented Security Pacific National Bank, and that took us a year to close. Now, this is not going to take a year to close. This is...what this loan is and what they have...the lenders...with the applicant's support and the lender's support, they have changed the loan to an acquisition loan instead of a full construction loan, which is much easier to do. So we could close the acquisition and they'll just provide funds for the demolition. We have the contract with PCCC, and they are working with internationally renowned architectural firm to finish the construction plan. So we are pushing...we are going to be pushing to close in March. From our standpoint, we have, you know, our office has the horses to do it. The question will be the lender's motivation. Until we speak to that person, we won't know for sure, but we are pushing...and they understand. We've made them aware of this...the permit and this process. So they understand the need to expedite, so we are pushing for March.

Mr. Abrams: Okay. So with March, which would be prior to the demolition deadline of six (6) months, right? That then would not be a problem for the lender because you are in compliance with all of the conditions at that point.

Mr. Pang: Right.

Mr. Abrams: So, I'm wondering whether or not...because I'm not quite sure...and I have questions for our Director in regards to here we may very well be, okay, we will be past a 6-month period that the demolition was to be complete, okay? So we would have to... Is that the process that we take, which is an order to modify? Or would that simply come up because there would be a mutual agreement? I don't know. How would that process go? Or how would you envision it going?

Mr. Pang: I would...we would prefer to have an agreement to modify. I'm not sure. I would defer to the County Attorney as to whether the Director has that authority. But that would...if we were able to get an agreement to modify, then that would send a great message to the lender,



and the lender would be very motivated to close because there is nothing else that prevents this project from going forward once we do that.

Mr. Abrams: And if we went ahead and decided to schedule this for the April 26<sup>th</sup> hearing, would it be possible then to withdraw all of that and not have that hearing if, in fact, you are making process? Because I think that's basically what we are looking for, right?

Mr. Dahilig: I think regardless, the conditions, as approved by the Planning Commission, state the demolition has to be completed within six (6) months of pulling the demolition permits. So even if we start the demolition process, it will not be completed, and so that still would warrant a modification of the permit. So, you know, I'm going off of the timelines as presented by the applicant in January where there was the contractor stating the amount of time that they would need to complete demolition, and even going so far as to talk about whether or not they purchased supplies for the demolition up to this point, which I believe, based on her testimony, they have not purchased supplies yet. Given her statement that they had not even ramped up for this, as well as the admission by the applicant that they would not meet this timeline, that's where, already, we know that that April 13<sup>th</sup> deadline will not see the completion of demolition. So even if they start the demolition and they close on the loan in March and they purchase the supplies, which have to be shipped from the mainland, and then they start the demolition, it still would not complete it by March [sic] 13<sup>th</sup>, and that's why I think it's appropriate for us to schedule the hearing. And if there is progress that has been made, then let's talk a settlement here, let's talk withdrawal, but I think it's, as stated in the initial permit approvals, there has always been the County's health and safety concern that these structures be taken down immediately, and hence the timelines are written as such. Remember, Commissioners, this thing has caught on fire twice. It has caught on fire twice and it places our first responders in danger, in health and safety danger, by putting them in a situation where you have an abandoned building that continues to catch fire. So this, for us, was a priority, it was stated at the initial permit hearing, and hence that's why this was a very first requirement, along with the signs, to be taken care of in order to maintain the health and safety and welfare of that area; especially for our first responders. I would not be averse, Mr. Vice Chair, to having that discussion with the applicant on a mutual agreement on amendments to the permit conditions if it so warrants, but at this juncture, I would not feel comfortable agreeing to such permit modifications at this juncture without any physical movement on the property at this point, and I believe that the hearing is warranted.

Mr. Pang: We would be happy to work with the Planning Department and the Director to reach a mutual agreement. One of the things we need to be careful of is starting any work, including the demolition on the property, and the reason is the lender because once, as you probably know, once it starts, the mechanics lien period starts. If that starts before the loan closes, the lender will not close because it puts them in a second position behind mechanics liens. So that is why they have not been...they have been putting off ordering materials. Ordering materials is not necessarily going to trigger the mechanics lien, but if they bring materials to the site, then it starts, so the lender prefers that nothing is done so it's clear that the lien period hasn't started, and that is one of the reasons why they haven't authorized to do anything. But we'd be happy to work with the Department to modify. I would just like...whatever action this Commission takes today, it would (be) unfortunate if it creates controversy that gets back to New York, and that is

really our concern. We're not...I understand the Planning Director's concerns; I do. We just need to try to...we are in the middle of trying to balance this situation with the lender. And I would just like to say that I think, generally, there is support for this project and there's an opportunity for an historical icon...an internationally historic icon to be rejuvenated and to alleviate the current situation at the site, but it depends on, really on that lender. If this lender decides to get cold feet, we have to start again, or another developer would have to start again, so we are hoping that that doesn't happen.

Mr. Dahilig: If I may, Mr. Chair, and if this...you know, our position on this, in terms of where the Department is, is that it still maintains its support for this project. We want to see this project completed. And so I cannot be any more crystal clear that we are not in a position where we are saying we don't like this project. We want the project to proceed, but obligations have not been met concerning how to develop this project and it would not be responsible for us to give these conditions a pass, from a departmental standpoint, and not raise the enforcement issues before the Commission just because we like a project. So this is not coming from a situation where we are saying we no longer want the project on the property; that could be further from the truth. We believe, you know, given this loan issue that has been raised at the last status hearing and then if you look at the February 5<sup>th</sup> edition of Pacific Business News, they had stated the loan was supposed to close yesterday. It's in Pacific Business News on the February 5<sup>th</sup> edition. So now we are hearing that the loan is going to close in March. I need to articulate to the applicant and the Commission, at least from a departmental standpoint, the sense of urgency that we see...that we have with respect to getting these buildings demolished. There is a sense of urgency and we need to articulate that very clearly that we need this to be a priority in terms of how development proceeds, and needs to be taken seriously. So, you know, if there seems to be progress, physical progress on the site in the interim between now and should the Commission set a hearing for April 26<sup>th</sup>, let's have that discussion about how we can accommodate things now that we see things are moving. But at this juncture, we don't see anything. We don't see anything. We see article after article of representation after representation that a loan is going to close, so that should be the message to the lender. If the lender also wants to have business with these guys, because it's a two-way street, that they should move very quickly, too. They should move very quickly, too, and understand that hey, you have the potential to make a lot of money, from a lender's standpoint, on this project, but you have a responsibility to also ensure that you take care of your obligations timely, too, to the applicant. So I want to state that, again for the record, this is not coming from a standpoint where we are saying we do not want the project anymore, but we want the obligations met.

Mr. Keawe: Mr. Pang, I have a question. You mentioned in your letter that sufficient funds for the applicant to acquire the parcels and complete demolition... Does that include the construction? Or is that a separate piece?

Mr. Pang: The actual construction is a separate piece. We took it out because it makes the loan quicker to close.

Mr. Keawe: So are we going to go through this again? With the next piece on the construction portion of it and having to wait for that to close?

Mr. Pang: Yes, you do. However, a lender who lends on acquiring property...this is a short-term loan and the lender, when it's underwriting it, why the underwriting took a while, is that they also look toward getting paid off. And so they will be...and we are looking at this same lender to do the construction...just that construction loans, as you can imagine, there's a lot more that needs to be put in place for construction loans.

Mr. Keawe: Obviously you got to complete the plans in order to even start that.

Mr. Pang: Right. You need to have contracts. They take everything as security, and you need to put those all in place. So what...I guess what I'm trying to convey is that yes, (it) is going to be necessary to close another loan to take this loan out, but it's almost like the lender is committed because the lender has put in their money and they want it back.

Mr. Keawe: So this is...the same lender will do both pieces?

Mr. Pang: That is the plan.

Mr. Keawe: And the second piece will be sufficient to complete the project?

Mr. Pang: Yes, yes. But we are also...be an opportunity to motivate the lender by, you know, seeing if anyone else is interested because that will make it better for the project as a whole. But yeah, so...

Mr. Keawe: Thank you.

Chair Mahoney: Mr. Ho.

Mr. Ho: Mr. Pang, you are speaking on behalf of the lender. Where's the deed at this time?

Mr. Pang: Oh, I'm actually speaking on behalf of the applicant; the borrower.

Mr. Ho: The borrower?

Mr. Pang: Right. But I just have...I've represented lenders before and I've closed a number of loans, so I understand the mentality of the lenders. But to answer your question, the deed will come when we close the loan; simultaneously with the closing of the loan. Because right now, it's owned by Prudential, and once we pay them, that's...the bulk of the loan is to pay Prudential to acquire the property. But we have a purchase contract, a binding contract, with them that if we pay them, they will give us the deed. They are obligated to do so simultaneously. So that would be in March, at the same time as the loan.

Chair Mahoney: Any further questions? Any discussion?

Mr. Keawe: I guess maybe, Jodi, you can help us with, or Mike, the options at this point. We have an item on the agenda. I need to know what the options are with regard to acting on this particular issue.

Ms. Higuchi-Sayegusa: Okay. So again, I guess the standard in the rules is a finding of whether there is a reasonable cause to believe that there is currently a failure to perform according to the conditions imposed. If you folks find that there is currently a failure to perform under the conditions, then the Commission shall issue and serve, on the applicant, an order to show cause; why the permit should not be revoked or modified. So I think that's the...again, that was the threshold question of what needs to be decided first before we get into the mechanics of when, before who, and what about any petition to intervene and what to do with that.

Chair Mahoney: So for discussion purposes, if members of the Commission have comments about...

Ms. Higuchi-Sayegusa: I mean, and as far as options, you know, I guess you folks could decide to continue a decision on a petition until after the deadline has phased, has passed. You could set it for the order to show cause, you know, after the deadline, you know, anticipating one way or the other whether an actual violation may have occurred or not, and then go through the Contested Case process on whether a violation has, in fact, occurred. And then what to do; amend, modify, or revoke.

Mr. Keawe: Would the Commission be subject to any kind of liability if we decided to act now when, technically, the failure is...that we know will happen...is in the future?

Ms. Higuchi-Sayegusa: Well, you know, the conditions...you know, the applicant did receive and understand the conditions that were imposed as part of the permit, and so, again, that was...a requirement of the permit is to comply with the conditions. I mean, that's as best as I can say at this point.

Mr. Abrams: So it would be reasonable for me to have the opinion now that because of the fact that Condition No. 17 of the permit calls for complete demolition within six (6) months of October 15<sup>th</sup>, and that I just, from a layman's standpoint, realize that they probably can't complete it by that date, that that would be grounds for me to then ask, under 1-12.5, for the Director to go ahead and review this and report back as it calls for within sixty (60) days from the date of acceptance of the petition.

Ms. Higuchi-Sayegusa: It's a...under the rules, a petition to revoke or modify can be brought by several parties. In this case, it is the Planning Department Director making that petition, and so he is part of the petition. You know, he did kind of lay out the reasons, but again, you know, the deadline has not phased at this point, so whether you folks want to allow the leeway to...

Mr. Abrams: Sort of ride itself out until...maybe this would be premature or not.

Ms. Higuchi-Sayegusa: Yes. Or to set it for the OSC, or...

Mr. Abrams: Okay.

Ms. Higuchi-Sayegusa: Or to continue decision to set it for the order to show cause, I would say are the options at this juncture.

Mr. Abrams: Okay. Well I think we would be dealing in good faith, I guess at that point, based on...and I guess I will reserve all that for our discussion depending on whether there's a motion, so.

Chair Mahoney: Does the applicant have any opinion on the options that were offered?

Mr. Pang: We understand the Director needing to start this process. We will be seeking to modify the condition. I think from a lender's standpoint perspective, I would think it would be beneficial if the Commission could defer its decision on whether to...order to show cause. So possibly the...when this arises, the motion before the petition would be more of a petition to modify then to revoke. That would be our preference at this point.

Chair Mahoney: Could the Department respond?

Mr. Dahilig: I think we are available to all those options as well. I do want to state that the standard of whether they are currently not in compliance with the permits as a failure to perform, you know, we are taking the testimony from the applicant at the January meeting as admission that they cannot perform by that deadline. So you know, we believe that threshold has been met based on that admission from the applicant during the status report. So we do not believe that you have to wait until April 13<sup>th</sup>; however, to make things sure, absolutely sure...again, the standard here is there is reason, right? It's not a reasonable doubt. We are not at a criminal proceeding here. And we believe that the admission by the applicant at that meeting is evidence enough to show that they will not meet that deadline. So we do not believe the Commission has to wait until April 13<sup>th</sup> to lapse to necessarily move forward with more discussion and more due process on this. We do not think that that delay is necessary, but we are asking for the hearing after that deadline does lapse, so that it's absolute. And when you are dealing with due process, you want absolutes because you are dealing with property rights here. But the threshold right now is not absolutes. That is not the threshold that the Department believes need to be met in order to issue the order to show cause. We believe, based on the admission at the January meeting, there is enough evidence to believe that they currently are not going to meet these deadlines; hence we do not believe we have to wait until April 13<sup>th</sup> to actually have another decision whether or not to issue the order to show cause.

Mr. Abrams: Chair?

Chair Mahoney: Any comment?

Mr. Abrams: Well, I would like to make a motion, so at some point if we're done with the... I'm satisfied with the discussion now to make a motion.

Chair Mahoney: Is everybody satisfied?

Mr. Keawe: I just had one (1) more question for Mr. Pang. Mr. Pang, you had mentioned you had been doing this for quite a while. Are you fairly confident, or have you had any conversations with the lender that this process that you are very familiar with will allow you to assist the applicant in closing that loan sometime in March?

Mr. Pang: Well, because the loan process has just gotten out of underwriting and is into the closing phase and the person that's involved is now in the ICU, I guess, (I) haven't had a chance to talk to them about what the requirements of closing are. But based upon my experience, this is essentially an acquisition loan. The applicant has kept this property pretty clean, as well as the seller, as far as raising issues for the lender from an acquisition standpoint. So if the conditions that the lender has for closing are not unusual, shall we say, I mean, I'm expecting some things because of the nature of this project, I don't see why we couldn't, but I have...to answer your question directly, I have not had any discussions, but we've done it before. We've done it before.

Mr. Keawe: Yeah, but my question is would it be something that you would want to do on behalf of your client?

Mr. Pang: Yes. This is why they've hired us. So we've done this before. We've done it.

Mr. Keawe: Thank you.

Mr. Pang: I've done it for thirty (30) years.

Mr. Ho: Mr. Chair, is there someone here that...in the audience that could represent the title side? The deed side of this discussion.

Mr. Keawe: The landowner. The current landowner.

Mr. Ho: The current landowner or somebody?

Chair Mahoney: No, I think right now we have the applicant. This is the order of business. Not the...

Mr. Pang: I could answer your deed questions if you...

Chair Mahoney: Direct your question to the applicant.

Mr. Ho: I would like to...

Chair Mahoney: Excuse me, let's take a caption break right now.

The Commission recessed this portion of the meeting at 11:04 a.m.

The Commission reconvened this portion of the meeting at 11:14 a.m.

Chair Mahoney: Call the meeting back to order.

Mr. Dahilig: Mr. Chair, the counsel for the applicant and I had met during the break. Given the discussion that has happened thus far, I think the Department is willing to...in terms of disposition of the application of petition, we would recommend that the Commission entertain approving the petition and issuing the order to show cause without a hearing date set, with a

condition that a status hearing be set on April 26<sup>th</sup> upon which time if the Commission is or is not satisfied with what transpires at that status hearing that the hearing, the full Contested Case Hearing, can be set soon thereafter. This does give us some latitude that if there is action on the property, that we can work out a mutual agreement concerning amendments to the permits and not have to go through the full Contested Case Hearing, and we can present that at the April 26<sup>th</sup> meeting. So that way it appears that it gives them enough of that latitude to try to meet those obligations, and we can try to cure the permits if there is some action. Now, obviously, if nothing happens on the property and we get to April 26<sup>th</sup>, I will ask the Commission to actually set the order to show cause for an actual hearing. So I would turn it over to the...if, Mr. Chair, to the applicant.

Chair Mahoney: Could the applicant respond?

Mr. Pang: We agree with...that's a reasonable position and we support the Planning Director's recommendation.

Chair Mahoney: Okay.

Mr. Pang: I also would like to address, I guess, Commissioner Ho's question on the deed if you...

Mr. Ho: My question is, concerning the deed, you have the assurances that it's all in place and once the financing comes through, the loan comes through, it's a done deal?

Mr. Pang: Right. Once we get the money, they have to give us the deed. The deed is...as complicated as this project is, the deed is no different from the deed to your house, so it's not something that takes very long. It's literally a 3-page document with the description of the property. So we could draft it up, (inaudible) could draft it up within an hour. We could do it and finalize it. But they are contractually obligated to deliver the deed, record it, at the same time we give them their money.

Mr. Ho: There's no escrow in this involved?

Mr. Pang: Oh they'll be in escrow. So what happens is they put their money in escrow, we put our deed in escrow...

Mr. Ho: Bingo.

Mr. Pang: Bingo. That's right.

Chair Mahoney: Any other questions? Hearing none. Chair will entertain.

Mr. Abrams: Mr. Chair, I make a motion to approve the Planning Director's petition to order to show cause with no specific...do you want them all... Should we take this in parts?

Mr. Dahilig: I guess with no hearing date set.



Mr. Abrams: With no hearing date. Right.

Mr. Dahilig: But with a required status conference on...

Mr. Abrams: April 26<sup>th</sup>.

Mr. Dahilig: Before the Commission.

Mr. Abrams: Okay. So my motion would be to approve the order to show cause as to whether or not we need to modify or revoke the applicant Coco Palms' permits, and we will not set a date for that hearing; however, we will have a status report at our April 26<sup>th</sup> meeting so that we can hear how the progress has gone between the applicant and the Planning Department so that we, at that point, can decide whether or not we will continue on with an order to show cause or not.

Mr. Keawe: I second the motion.

Chair Mahoney: Okay. It's been moved and seconded. Any further discussion? We'll do a roll call vote.

Mr. Abrams: Hang on. I got some discussion.

Chair Mahoney: Discussion, okay.

Mr. Abrams: I'm reluctantly doing that simply because I understand the rationale, at this point right now, of why this is so urgent, okay? I didn't really in the beginning, but it is. It's a public situation there that is dangerous and can be, and I realize that it's been going on for a long, long time, but that doesn't mean that it may not accelerate and that was the reason why we were trying to get through this. This is important. So I think that the Director's rationale had good grounds to go ahead and ask us to consider it, and I think that should they not be at that point, we should...and it doesn't work out that we should move ahead and let the Contested Case Hearing start. So that's the reason why I felt to go ahead and stick with it on April 26<sup>th</sup> simply because of the fact that that was an extra month past March, and so now, hopefully, that will satisfy your lenders in regards to moving ahead and that indication and also point out to them that, you know, it is important to us to make sure that this moves along in a timely manner.

Mr. Pang: We understand and we appreciate your...

Chair Mahoney: Any other discussion?

Mr. Keawe: No, I agree with Commissioner Abrams. I think it's time to perform and I think this is somewhat of a compromise. You got an extra two (2) months and hopefully we can see something happening. I think...it's not just us, it's the entire public. You know, everybody that drives past that hotel every single day asks the same question, when are you guys going to do something? And it's our responsibility to make that happen. And I think the applicants realize that, but it's time to perform.

Chair Mahoney: Okay, I think we all realize it, you know, a lot of people in the community are concerned about this, and there are important deadlines that should be met, and I think we've had a good discussion. I think the Commission is on a fair track, and so the motion has been made and seconded. We'll call for the vote by roll call, please.

Mr. Dahilig: Okay. Mr. Chair, the motion on the floor is to approve the Planning Director's petition to modify or revoke Coco Palms Hui's permits without a hearing date set with a required status conference on the second meeting in April.

Commissioner Ho?

Mr. Ho: Aye.

Mr. Dahilig: Vice Chair Abrams?

Mr. Abrams: Aye.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Aye.

Mr. Dahilig: Chair Mahoney?

Chair Mahoney: Aye.

Mr. Dahilig: Four (4) ayes, Mr. Chair.

Chair Mahoney: Motion carries.

Mr. Pang: Thank you, Commissioners.

Mr. Abrams: Yeah, I don't know. That was a question I was going to have.

Ms. Higuchi-Sayegusa: I'm sorry, what was that?

Mr. Abrams: We have an intervenor. I mean, we actually have that. I don't know whether or not we want to decide whether they come in or go after that. It would seem to me that we've already decided we will have it if that doesn't happen, so...

Ms. Higuchi-Sayegusa: Right.

Mr. Abrams: Do we deal with the intervenor now?

Ms. Higuchi-Sayegusa: I mean, it's up to you folks whether you want to discuss that now or maybe cross that bridge should the hearing be set, the date be set.

Mr. Abrams: So we could do that on the 26<sup>th</sup> also, then at that point and still not have a problem with that process?

Ms. Higuchi-Sayegusa: Yes.

Mr. Abrams: Is that alright?

Jennifer Lim: This is Jennifer Lim from PR II Coco Palms, LLC. Actually, we are happy to request that the Commission defer action on our petition for intervention in light of the motion that the Commission just passed.

Mr. Abrams: Okay.

Chair Mahoney: Thank you.

Ms. Lim: To defer action until the status meeting on the 26<sup>th</sup>.

Mr. Abrams: Mr. Chair, could I make a motion to defer action on the intervenor's status of this by PR II Coco Palms, LLC, Prudential?

Chair Mahoney: Okay. Is there a second? We need a second.

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0. Thank you.

## **COMMITTEE REPORTS**

### **Subdivision**

Mr. Dahilig: Thank you, Commissioners. We are now on... In light of efficiency, Mr. Chair, why don't we take up the Committee Reports, under Item K?

Chair Mahoney: Okay, Committee Reports. Subdivision Committee.

Mr. Abrams: Subdivision Committee met this morning to review three (3) items. First was tentative subdivision approval for Clise Property Trust, TMK: 2-6-014:018 that was approved 3:0. And then we had two (2) extension requests. Jean Nadatani, No. S-2012-12, we approved that 3:0. And also Princeville Prince Golf Course, LLC, No. S-2013-8, approved 3:0. That concludes my report.

Chair Mahoney: Okay, thank you. Is there a motion to approve or receive?

Mr. Keawe: Motion to approve the Subdivision action.

Mr. Ho: Second.

Chair Mahoney: Moved and seconded. All in favor? (Unanimous voice vote) Motion carries 4:0. Thank you.

### **NEW BUSINESS (Continued)**

Special Management Area Use Permit SMA(U)-2016-2 to construct a single-family residence on a parcel situated at the terminus of Nalo Road in Po'ipū, situated approx. 600 ft. mauka of its intersection with Hoone Road, further identified as 2289-A Nalo Road, Tax Map Key 2-8-027:023, and containing a total land area of 20,000 sq. ft. = POP Acquisition LLC.

Mr. Dahilig: Thank you, Mr. Chair. Let's go back to the action on Item F.2.a. This is Special Management Area Use Permit SMA(U)-2016-2 at Tax Map Key 2-8-027:023. This is POP Acquisition and Jody Galinato is our Planner on this. She is nursing a bit of a cold, so try to give her a little bit of a break on the talking.

Staff Planner Jody Galinato: Good morning, Mr. Chair and members of the Commission.

Chair Mahoney: Good morning.

Ms. Galinato: Just request your permission and forgiveness to provide a very brief summary on this. It's consideration to construct a third residence on the lot of record. A brief project description is the applicant is proposing to construct a third single-family residential unit. The proposed 1,815-square foot residence will be two (2) stories and contain four (4) bedrooms and three (3) baths. The first two (2) residential units were originally permitted in 1974 and '76, and our considered to be grandfathered in. There have been Class I Permits for interior renovations and as represented, the four (4) existing cesspools on the property will be upgraded with two (2) individual wastewater systems. In regards to my additional findings, the property is surrounded by residential, resort, vacation rental units, and commercial properties. It is adjacent to the former Casa Di Amici Restaurant, which was recently approved by the Planning Commission to be converted into a real estate office. It's not in a flood zone. There were previous violations on this property. We have been on-site and verified that the violations have been resolved. In regards to development standards, the project is compliant with the setbacks, the height, the lot coverage, and the parking. In regards to the density, the property qualifies for four (4) units; this is the third unit. The preliminary evaluation, regarding the SMA rules and regulations, we reviewed it for public access and coastal recreation, cultural and historical resources, coastal hazards, coastal ecosystems, scenic and open space resources, and found it to be in compliance with the SMA rules and regulations. Regarding the General Plan, the property is designated as resort, and lands designated resort may also be used for residential purposes, so the construction of the single-family residence complies with the General Plan policies. Regarding the South Kua'i Community Plan, it complies with the intent and especially appreciative of the elimination of the cesspools and installation of the native plants into the landscaping plan. I'll hold off for my preliminary conclusion and recommendations. If you have any questions, let me know.

Chair Mahoney: Thank you.

Ms. Galinato: Thank you.

Chair Mahoney: Could we...is there a representative for the applicant present?

Lorna Nishimitsu: For the record, Lorna Nishimitsu on behalf of POP Acquisition. I'm accompanied by Frank Supon who's one of the principals with POP Acquisition, and his Planner Justin Thain. Rather than go to my pre-written spiel, which I'm sure you'll appreciate, what I'd like to show you is a photo...POP Acquisition got this property in July of 2014, and it essentially looked like this. The buildings were, you know, as Jody noted, they existed, but there were a number of zoning violations and a number of tenants. A few months after acquisition, the demolition, pursuant to permits, began so the lot got cleared out and what now exists is...with a renovation permit for the first dwelling, which they are near completing, Building No. 1 now looks like this. So essentially what they've done is cleared up outstanding violations that preexisted their acquisition, and they simply want permission, because the SMA rules now require it, to build a third dwelling where four (4) previously existed. If there are any questions, we'd be happy to answer them.

Chair Mahoney: Are there any questions for the applicant?

Mr. Abrams: Yes. Lorna, Parcel 43, that's not owned by POP Acquisition?

Ms. Nishimitsu: Is Parcel 43 the property fronting it on Nalo Road?

Mr. Abrams: Yes. 42, excuse me. 43 is...

Ms. Nishimitsu: Yeah, that is not POP Acquisition's property. What happened was, the property POP owns is technically...it was landlocked, but it does have an easement. We acquired an additional easement over that property that fronts Nalo Road for access purposes. So one (1) existed, but we obtained an addition to it to make it wider to accommodate traffic because we have to provide on-site parking for six (6) vehicles.

Mr. Abrams: So I was looking at your warranty deed, or the warranty deed. And looked at No. 2 on Page 3 where it said "Grantor", which I'm assuming was the Yates family, right? Yeah, the Yates Trust. As owner of the adjacent property described as Lot 5-A agrees that upon the request of Grantee and at Grantee's sole cost, they shall execute and deliver an amendment or modification of the existing Grant of Easement dated 2001. So you just went ahead and expanded that, and now have one that replaces this Grant of Easement?

Ms. Nishimitsu: It expands the Grant of Easement. It made it...

Mr. Abrams: Wider.

Ms. Nishimitsu: The access the wider.

Mr. Abrams: Okay.

Ms. Nishimitsu: So we did do that after closing because I had to prepare that Grant of Easement.

Mr. Abrams: Okay, and so it sort of was an anticipation of the fact. But widening if necessary, the access which provides for access and utility from Nalo Road in favor of the property described herein, to the extent imposed by the County of Kaua'i as a condition to any permit or other requirement for Grantee's development of the subject property. So I was...because it's a landlocked, would you not think that that should have frontage on Nalo Road? I never had a property that I am aware of that doesn't have frontage on a public road.

Ms. Nishimitsu: These lots preceded...were apparently created before there was a Subdivision Ordinance, so the parcel is landlocked. But an easement existed over the Yates property in front, and what we did was...knowing that the easement was rather narrow, we expanded on that so that there wouldn't be any concerns about fire access, etc. because Mr. Supon, POP Acquisition, knew that they were going to demolish, renovate, and redevelop. So all of that was done with his forethought in anticipation of what might be required in the future.

Mr. Abrams: Okay, so I guess that parcel that sort of intrudes itself into the Manualoha Condo Project, I guess, was...I forget. Leadership Homes, I guess, way back when and that was in the 60's or so when this was acquired by the original landowner. I believe it was the Zalopany's.

Frank Supon: Correct.

Mr. Abrams: Yeah? And there wasn't...I don't know whether there was a subdivision along or not at that point, but it was acquired, I guess at that point, with the intention of adding onto the property that they owned, I guess, right? Up until...

Ms. Nishimitsu: Well, I'm not really sure under what circumstances the Yates acquired the property they sold to POP Acquisition or the front property. Are you?

Mr. Supon: Frank Supon for...representing POP Acquisition. So it's my understanding that the Zalopany family owned three (3) lots; the one that we now have a 30-foot easement on for access, the back lot that we bought, and the restaurant site, which was subject to...

Mr. Abrams: Yes. So...

Mr. Supon: And the Yates family purchased that from the Zalopany family; those three (3) parcels.

Mr. Abrams: Right. And so they had that one big one, right? Behind there. Access was over their property.

Mr. Dahilig left the meeting at 11:35 a.m.

Mr. Abrams: So now that they have...and I guess, wouldn't you normally end up consolidating that lot with the front property at that time if they owned everything? I don't...I mean...

Ms. Nishimitsu: Well, that could have been a development plan that was never...that never came to fruition.

Mr. Abrams: It just never happen, then, at that point.

Ms. Nishimitsu: Yeah, because the deed to POP Acquisition describes the back lot containing 20,000 square feet together with an easement over the front lot. And the language in the deed contemplated needing to get additional land from Yates over the front lot for a wider easement to the back lot, so that's what transpired.

Mr. Abrams: Okay. And so actually, I guess at this point, this site plan, which is Exhibit D, shows that driveway. Is that the thirty (30) feet it mentions as being the driveway that touches up with Nalo Road? That's the easement?

Mr. Supon: Yes.

Mr. Abrams: And so to the left of it, to the property line, is that...who's?

Ms. Nishimitsu: On Lot 4-A?

Mr. Abrams: Oh I see. I see. It...well, let's see. I guess it's the...it's Lot 5-A's property, then, right?

Ms. Nishimitsu: The easement is on Lot 5-A. The map showing...

Mr. Dahilig returned to the meeting at 11:37 a.m.

Ms. Nishimitsu: Exhibit D shows the existing easement width, but it doesn't show the additional easement area that was acquired.

Mr. Abrams: Okay. So that corner of Nalo Road that goes all the way up to this parcel, 2-B, is, I guess...I don't know, let's see, how wide that is. It doesn't show it, but it does show the driveway, I guess, showing thirty (30) feet and that's what you have now?

Mr. Supon: It started out as...

Mr. Abrams: But that's really on your property.

Mr. Supon: Yes. It started out as ten (10) feet, then it went to fifteen (15) feet, and now its thirty (30) feet.

Mr. Abrams: Okay. And is that the location of the driveway, then, coming out of your property onto Lot 5-A there?



Mr. Supon: Correct. Yes.

Mr. Abrams: Okay. And that would be the total easement that you now have?

Mr. Supon: Yes.

Mr. Abrams: Okay. Thank you, Lorna.

Chair Mahoney: Any further questions? Can we hear from the Planner, please? If she can speak.

Ms. Galinato: Okay.

Ms. Galinato read the Preliminary Conclusion section of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: Based on the foregoing conclusion, it is recommended that SMA Use Permit SMA(U)-2016-2 be approved with ten (10) attached standard conditions. If I can be excused from reading all those?

Chair Mahoney: Yes.

Ms. Galinato: Appreciate it. Thank you.

Mr. Dahilig: And if you would like them read, I will read them for Jody.

Ms. Galinato: Thank you.

Chair Mahoney: Does the applicant understand and agree with all the conditions?

Mr. Supon: Yes.

Chair Mahoney: Have the Commissioners read the conditions? Any comments? Okay. Chair will entertain a motion.

Mr. Abrams: Chair, I move to approve SMA Permit (U)-2016-2, POP Acquisition LLC.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 4:0. Thank you.

Mr. Dahilig: Thank you, Mr. Chair.

Chair Mahoney: Thank you, Jody.

Zoning Amendment ZA-2016-3: A bill for an ordinance Amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Definitions = County of Kaua'i, Planning Department.

Mr. Dahilig: Maybe if you want to try to squeeze in the last action item before lunch.

Chair Mahoney: Might as well.

Mr. Dahilig: Alright. It will just leave discussion items after lunch. Item F.4. This is Zoning Amendment ZA-2016-3. This is a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Definitions. Our Planner presenting on behalf of the Department is Marisa.

Chair Mahoney: Good morning.

Staff Planner Marisa Valenciano: Good morning, Chair and members of the Commission. Chair, may I have permission to summarize my report?

Chair Mahoney: Yes.

Ms. Valenciano: Okay, thank you. So what you have before you is a proposed bill for an ordinance that is being initiated by the County of Kaua'i and is hereby submitted to the Planning Commission for review and recommendation. The proposed draft bill amends Chapter 8 of the Kaua'i County Code to modify the current definition of "applicant". Some of the changes to the definition of "applicant" include a modification of the controlling interest from "75%" to "100%" of the equitable and legal title, and a modification from "lot" to "duly subdivided parcel of record". I just want to note that my report goes into more detail about the justification and reasoning of the proposed draft bill and includes a table showing some of the findings of other jurisdictions that have also included "applicant" as part of their County Codes.

Chair Mahoney: Thank you. Any questions for the Planner? Excuse me, I'm just getting this lined up. Any questions?

Mr. Abrams: Yes. So, I understand it. I mean, you are going from 75(%) to 100(%), and so would that, in effect...how does that work for a condominium project that has lots of things that they may...has lots of units on it? Would you need 100% of those units?

Mr. Dahilig: We would interpret Power of Attorney as set forth in the CPR documents as evidencing 100% of the landowners saying yes, you can apply for these permits.

Mr. Abrams: Okay, so sort of like, I guess at this point, with a condominium that has a declaration that authorizes a Board of Directors that would be sufficient for them to then apply for a permit?

Mr. Dahilig: Yes.

Mr. Abrams: Without getting all of the other individual unit owners' okay?

Mr. Dahilig: Yes. That's how we are currently interpreting it as we speak right now.

Mr. Abrams: And so how does that work on the types of condominiums that you guys don't like which are the CPRs on Ag land? Would you require all of them that have single-family homes? Or...I'm not quite sure, so I just need to ask that question as to how you would go about doing that because if you are relying on a Board of Directors, now, to make those decisions and sometimes you have a 5- or a 3-unit condo, and most of them, the only common element is a driveway, right, and everybody makes their own decisions, but they are still required, if there are any building permits, because you treat that parcel as one (1)...I mean, one (1) parcel. It's not a subdivided lot, so that all of them would have to now, then, do that?

Ms. Valenciano: My understanding is that they would have to. Is that correct, Mike?

Mr. Dahilig: Yes. So currently, if they have a CPR and they are attempting to apply for the building permit, if they do not have authorization to actually come in via the codes and covenants that are recorded with the property to actually apply, they would need to evidence concurrence with all the CPR owners or the AOA to apply for the permit.

Mr. Abrams: Okay. So these would be the AOA applying for the permit or, in effect, an individual condominium unit applying for a permit with every owner signing on in order to complete the 100% ownership.

Mr. Dahilig: Yes.

Mr. Keawe: So the existing...if I get this right, the existing documents would still take precedence? Those that were registered when the property was CPR'd.

Mr. Dahilig: Not necessarily. If those documents were recorded and do not give the Power of Attorney to apply for the building permits or the zoning permits...

Mr. Keawe: So the key issue is the Power of Attorney given to the Board?

Mr. Dahilig: Or to...

Mr. Keawe: Or to an individual.

Mr. Dahilig: To each individual owner. They would have to amend their codes and covenants to allow for that flexibility.

Mr. Keawe: If they didn't have a Power of Attorney clause in their docs.

Mr. Dahilig: Yes.

Mr. Keawe: Oh. Okay. And the purpose is to...of this change...is to make it easier to make changes? Or just to get consensus that everybody agrees?

Mr. Dahilig: The purpose of this is provide a threshold that is rational in determining whether or not somebody is authorized to act as an applicant or not.

Mr. Keawe: Yeah, I would say (it's), you know, a little difficult in, like Louis said, some of the smaller properties, you know, you got six (6) or eight (8) guys, and you know, three (3) of them say absolutely not.

Mr. Abrams: Well...and I recognize the dilemma that the Department has, even at 75%, okay? That it's really not their problem, and that, in effect, they can't be held responsible for making sure that they, you know, they allow something that goes beyond that. But my experience has been that when you try to ask for 100% of anything, you are never going to get it, okay? So that, then, could end up being a big problem for the County of not being able to do some of the things that might be what these owners want to do. I mean, this is probably going to have more discussion up at the Council, and that, and I don't think...maybe some of the people who are (on) the Realtors Board, I mean, those type of people to get a look at it from that standpoint.

But let me double check on these with you, so the Big Island, they basically say that "owner" means one who has complete dominion over particular property and the one whom legal or equitable title rests. So they...I don't know whether an Ag CPR he has complete dominion over what he owns, okay?

Administrator Furfaro left the meeting at 11:48 a.m.

Mr. Abrams: And so...oh, but it says or equitable title, so he has equitable title. So that person could do that on their own? They wouldn't need anybody else? I mean, for a CPR that's...I'm just really...that's the bugaboo that I'm just trying to figure out how this would work for you and for the applicants who would be coming in, as opposed to...I mean, I get the other ones where it's a condo because the single-family lots that are subdivided...I come in for a permit, that's pretty straight forward, 100% is not a problem. Okay, so they can do either way. Maui says owner who holds a recorded lease, unexpired term less than five (5) years. That's the same thing. You just have to have 100%...do we still have that clause in there for ours?

Mr. Dahilig: Yes. There's still a lease.

Mr. Abrams: Okay, so a lessee who has a 5-year lease or more can come in for a permit if they are authorized to do that.

Mr. Dahilig: Yes.

Mr. Abrams: Okay. And...City and County...I'm not quite sure what this means. Any person with written authorization from the owner who intends to improve or construct...oh, they just simply refer back to the recorded owner of the land, so that's where you'd be checking that's basically 100%, I guess at that point.

Mr. Dahilig: Yes.

Mr. Keawe: Whoever has the fee simple interest, right?

Mr. Abrams: Yeah. Alright. It's gonna be...you are going to get yelled at a lot in the very beginning (inaudible).

Mr. Dahilig: Oh yeah. We suspect (inaudible).

Mr. Abrams: I'm sure you're used to that.

Mr. Dahilig: There's...and if you'll notice, there is an executive session here, and there's another reason for this that we can't discuss on the record concerning this, which we can in executive session if that's...if the Commission would like to have that discussion with the attorney, but we do have...we would like to, I guess, in effect, tighten the language concerning this moving forward so that when we do have applications that are not in compliance with the owner condition, that we have a very clear standard moving forward.

Chair Mahoney: Do we need any action on this?

Mr. Dahilig: If the Commission would like us to discuss this more, again, this is not a pressing item where we need to have it sent up immediately, but it is something that we would like to take care of in a timely manner, so we are not looking for action today. It would be nice, but it's not...we don't want to push the Commission if they're not ready for discussion of this yet.

Chair Mahoney: What is the Commission...?

Mr. Abrams: I guess I would feel more comfortable having a little bit more time thinking about this. I really had...was reading some of the other ones and really didn't think about this, other than there, but I see the logic now of what you are trying to do and just sort of have a chance, maybe, if you want to just defer this to our next meeting. Would that be alright?

Mr. Dahilig: That's fine.

Mr. Keawe: When is our next meeting? Is it...

Mr. Dahilig: March 8<sup>th</sup>.

Mr. Keawe: The 8<sup>th</sup>?

Chair Mahoney: March 8<sup>th</sup>.

Mr. Keawe: March 8<sup>th</sup>.

Mr. Abrams: I mean, outside of that it's...between...and I would like to have a chance to talk to the attorney, I guess at that point, where we could schedule up that, or maybe even put it on the agenda for discussion on the 8<sup>th</sup>, yeah?

Mr. Dahilig: Well, it's on now, so you could...

Mr. Keawe: It's on here now.

Mr. Abrams: Yeah, it's on there now, we could (inaudible).

Mr. Keawe: You want to move that to the 8<sup>th</sup>? Or you want to do it now?

Mr. Abrams: Let's move it to the 8<sup>th</sup>, yeah? We can move it all, at that point, where we can have it more fresh in our mind.

Mr. Keawe: Yeah, makes sense.

Chair Mahoney: Okay, so do we need a motion or anything?

Mr. Dahilig: To defer.

Chair Mahoney: Just a motion to defer.

Mr. Abrams: I make a motion to defer Zoning Amendment ZA-2016-3, County of Kaua'i, Planning Department.

Chair Mahoney: To our next meeting?

Mr. Abrams: To our next meeting.

Chair Mahoney: March 8<sup>th</sup> meeting?

Mr. Abrams: March 8<sup>th</sup>.

Mr. Dahilig: Okay.

Chair Mahoney: Is there a second?

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor of deferral (to) March 8<sup>th</sup>? (Unanimous voice vote) Motion carries 4:0. Thank you.

Mr. Dahilig: We have two (2) items left for discussion today. That is the Salary Commission findings, as well as the Six-Year CIP Report. Would you like to take up either of them before lunch? Or would you like to head to lunch already?

Chair Mahoney: Up to you guys. You want to...let's do it or what? Let's go to lunch?

Mr. Keawe: Salary Commission and the other one is the General Plan Update?

Mr. Dahilig: Yes.

Mr. Abrams: He wants lunch.

Chair Mahoney: Okay. Well, why don't we break for lunch?

Mr. Dahilig: Okay.

### **EXECUTIVE SESSION**

Pursuant to Hawai'i Revised Statutes sections 92-4, 92-5(a)(4), the purpose of this executive session for the Planning Commission is to consult with the County's legal counsel on questions relating to Zoning Amendment ZA-2016-3 Definition of Applicant. This consultation involves consideration of the Commission's powers, duties, privileges, immunities, and/or liabilities with regard to this agenda item.

Chair Mahoney: So we would be deferring the executive session, and a motion would be in order to defer that, also.

Mr. Abrams: Okay. Move to defer H.1., which is Executive Session, for ZA-2016-3.

Mr. Keawe: Second.

Chair Mahoney: Okay, moved and seconded. Any further discussion? Hearing none. All in favor to defer? (Unanimous voice vote) Motion carries 4:0. Thank you.

At this time, we can break for lunch and return (at) 1 o'clock.

The Commission recessed this portion of the meeting at 11:54 a.m.

The Commission reconvened this portion of the meeting at 1:13 p.m.

Chair Mahoney: Call the meeting back to order.

### **GENERAL BUSINESS MATTERS (Continued)**

Informational Presentation on the Status of the General Plan Update and Six-Year Capital Improvement Program Report.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item I.3. This is the informational presentation on the status of the General Plan Update and the Six-Year CIP Report.



As you are aware, the Commission does have a charge from the charter relating to six-year CIP planning, and we've actually folded that discussion, today, into what we have broadly been doing with the General Plan Update. At this time, with your indulgence, Mr. Chair, I'd like to turn over the presentation to our Long Range Planning Program Manager Marie Williams, and she will take the lead, along with her team here, on what's been going on with the General Plan.

Chair Mahoney: Okay.

Marie Williams: Thank you, Mike. Thank you and good afternoon, all. We are here to provide a briefing on a very important project, the General Plan Update. We actually did provide our first update in September of last year, but we are here before you again to keep you apprised of the process and our work, and also because there are some new faces as well, and we wanted to have you be acquainted with us in this project because in a few short months, we probably will have a draft General Plan Land Use Map and the actual General Plan Update before you, and you will have to review the plan and recommend approval or not; hopefully approval of the plan. And we didn't want it to be a surprise because the plan is quite complex. First of all, I'll just mention...

Mr. Keawe: Could you introduce yourself?

Ms. Williams: Oh, I'm sorry. My name is Marie Williams with the Long Range Planning Division, and perhaps we can all go down the line and introduce the entire team.

Lee Steinmetz: Good afternoon. I'm Lee Steinmetz. I'm the Transportation Planner with the Long Range Division.

Ruby Pap: I'm Ruby Pap, and I'm with the University of Hawai'i Sea Grant College Program, and also work for the Planning Department on the General Plan.

Lea Kaiaokamalie: Good afternoon. I'm Lea Kaiaokamalie. I'm a Long Range Planner with the Planning Department.

Ms. Valenciano: And I'm Marisa Valenciano, and I'm a Long Range and Regulatory Planner.

Ms. Williams: Thank you.

Ms. Williams, Mr. Steinmetz, Ms. Pap, Ms. Kaiaokamalie, and Ms. Valenciano presented a PowerPoint presentation regarding the General Plan Update for the record (on file with the Planning Department).

Mr. Dahilig left the meeting at 1:21 p.m.

Mr. Dahilig returned to the meeting at 1:37 p.m.

Ms. Williams: Okay. Thank you, Marisa. Just in conclusion, we wanted to share with you information about the plan and where you can go to participate; not just for you, but for anyone who might be watching this program on TV. Please check out our website. It's plankauai.com.

It has PowerPoint presentations, information, reports, the existing General Plan, summaries from our meetings with the Citizens Advisory Committee, and most importantly, an email sign-up where we encourage people to join so you can be apprised of future public events when we have the draft plan and we are ready to take it out to everyone. Follow us on Instagram and Facebook, or just email us and always, you are...anybody is welcome to come to the Planning Department front counter, and ask for one of us and we will speak with you, or call us as well.

Finally, I'll just bring this back to the Six-Year CIP Report, which also is a charter mandate of all of you, as the Planning Director said. Typically what we do is we update this plan every year. It's a recurring plan...a rolling plan. For those of you not familiar with this report, what it is, is a short to mid-term plan or list of proposed capital projects that we would like to see, but as you know, we are a small county with limited resources and it's impossible to fund every single project on this list. We...in the past, people have been a little concerned that it's more of an unrealistic wish list, and we've been tasked and challenged by, not only you as a Commission, but the Mayor's office as well, to find a way to make sure this is more of a strategic document to help us prioritize projects; how do we compare a Parks project with a certain road resurfacing project, for example. And for us, the key to doing that really is the General Plan. If we can get a community vision and somehow tie that to goals and objectives, we can have a framework for ranking projects. It's not just community goals. There are other things to consider, such as health and safety, for example, or availability of funds. We will be looking at developing this framework through the General Plan process and so next year, or this year, I'm sorry, when we come before you with the updated Six-Year CIP Report, it probably will look very different from this version, which is last year's report that this Commission approved and we sent to Council.

That concludes our presentation. If you have any questions, we are all here to answer.

Chair Mahoney: Well, thank you very much for the report. That was...we are lucky to have such a great team on Kaua'i, I think. Does any of the Commissioners have any questions you would like to ask (inaudible)?

Mr. Keawe: Are all of the plans available online? The ones that are in draft form.

Ms. Williams: All of the technical reports and the existing General Plan and some of the work product, such as the materials from the November workshops that Marisa showed, are online.

Mr. Keawe: Okay.

Ms. Williams: But yes.

Mr. Keawe: Good.

Mr. Ho: Lee, your bus routes, your bus routes, do all...not all of them have those bus shelters now. How do you put them out?

Mr. Steinmetz: So that is a process that is ongoing. There was a round of construction that built, I think, eight (8)...somewhere around eight (8) bus shelters. There is another round that is out to

bid right now, which will...I'm not really sure how many is in that, but the goal is within the next couple of years to have about forty-nine (49) bus shelters at the highest ridership locations to be installed. So we are getting there in terms of having construction of bus shelters at all of our high ridership locations.

Mr. Ho: Are any of those bus structures on private property where you have to go to private individuals?

Mr. Steinmetz: I don't believe so. I believe they are all on public property.

Chair Mahoney: Anyone else? No? Well, thank you very much for your report. Do you have anything you want to add?

Mr. Dahilig: No.

Chair Mahoney: Thank you very much.

Mr. Dahilig: Actually, I do have one (1) question. Sorry. Just for a question that was raised in the room, can you maybe describe some of the integration in the policies and plans that you are using to address some of the civil defense and hazard issues relating to coastal inundation as such?

Ms. Pap: Could you be a little more specific in your question? Sorry.

Mr. Dahilig: I guess, you know, part of the...for instance, the Civil Defense Agency has inundation zones concerning tsunamis. How are those types of spacial areas that have been defined being integrated into the land use policy for the General Plan Update?

Ms. Pap: Yeah, okay, I understand. The Civil Defense tsunami inundation maps have been translated and used for evacuation, tsunami evacuation areas, and that information is depicted on a set of hazard maps, which have been developed in draft form for the General Plan. So we are currently reviewing the hazard maps and will be, I think, juxtaposed against, perhaps, proposed land use maps to see which communities...there are red flags for certain communities. Obviously, many of us live within evacuation areas and we all should be aware and many communities are already built, so I think the discussion will be with existing hazards and then also with future exacerbation of those hazards from sea-level rise and such is how do we move forward from here? And Kaua'i is not the only community that's in this boat. I mean, this is happening world-wide, and so I think it's going to be an ongoing policy discussion. One of those...one of our largest recommendations that came out of the technical report was the next step that updated hazard risk and vulnerability assessments be conducted for key communities to really identify facilities, such as infrastructure, roads, and things that are going to be in harm's way. We already have some of that done by Civil Defense through their multi-hazard mitigation plan, but this would be incorporating future climate change concerns, and then that information can be used as a basis for the community to decide then okay, what are we going to do? Are we going to protect ourselves with walls? Are we going to implement some sort of strategic retreat

policy where we start to move things back? But it will help us prioritize better projects and plans and capital improvement projects and things like that.

Mr. Kaiaokamalie: I just wanted to add that we are so fortunate to already have a wealth of data available to us. A lot of these...the information, such as the tsunami maps, shelters, and such are already captured in digital format, so we can share information back and forth with the different agencies. Also fortunate to have the work of Dr. Fletcher, of course, and NOAA, and some of the Federal partners so we can readily utilize that data in our mapping when we are overlaying different information and analyzing certain areas that might be vulnerable to impacts, for example.

Mr. Keawe: Most important question, how can I get a t-shirt? (Laughter in background)

Ms. Kaiaokamlie: I can give you one.

Mr. Keawe: Good job guys. Thank you.

Chair Mahoney: Thank you for the presentation.

Discuss Salary Commission Findings of February 5, 2016 and any Potential Correspondence.

Mr. Dahilig: Okay, Commissioners, the last item on the agenda is one that involves the personnel management of the Commission, but it specifically relates to the County's Salary Commission findings that were released and actually being heard at the Council tomorrow. The Administration has wanted each of the Commissions that directly supervise a Director, and this is one of them, to weigh in on the Salary Commission's recommendations concerning an increase in salaries. The Salary Commission has found that the last time executive pay was raised in the County was in December of 2008, so it's been roughly seven and a half (7 ½) years since there has been an increase in salaries across the board. What the Salary Commission is proposing is an increase equivalent to what has been the rate of inflation over the past six (6) years, so that equates to a little under 12%, or 11.2%. So in effect, if you look at the salary that has been set by the Salary Commission in 2008, it has 88% of the...a little over 88% of the buying power now than it did back in 2008. The Administration is very concerned about the effect this is having on retention of employees. We've seen a number of Directors and Deputy Directors already leave the County as it relates to the service relative to the amount of pay that is being gotten. Most recently, Larry Dill has left the State [sic] and he's enjoying a higher salary based off of his transfer. So you know, it is something that, I think, in as much as the Salary Commission is concerned about the rate of salaries, it is not related to who the person that is actually in the seat. They've tried to make that very clear in their findings that it's not an evaluation of whether somebody is good or bad for the job; rather what is a fair wage and competitive wage to keep pace with the private sector in order to retain the skilled workforce necessary to supervise and manage the County's programs. So one of the options that the Commission could do is send individuals to testify publicly at the Council tomorrow about what position they have concerning the Salary Commission findings and/or the Commission can also send a letter, which I, as the Clerk, can write up and then send up on behalf of the Commission.

It's a very short insert with the PDF. Its Pages...it starts on Page 457, but you'll see on Page 469 the salaries as proposed, and you'll see the majority of them are based off of the cost of living increases that have occurred over the past six (6) years and that's what many of the salary increases are being proposed at. I can help answer questions. Again, I'm not the guy that's been in charge of this, but we've been tasked as Directors to share this information with the Commissioners.

Mr. Keawe: I just had one (1) question. Mike, what were the reasons given in years past for not granting any salary increases?

Mr. Dahilig: What has happened in the past, at least as I can characterize them, the pay raise schedule had actually gone out to, I think, 2009, and that was around the time of the big crash. So in times of austerity, what was the Administration's response was to say look, you know, no raises for the Administration. We'll cut out that last year of the increase. Correspondingly, there were collective bargaining furloughs that had occurred, some rifts that had occurred, across the State during that time when the tax revenues had dropped significantly. Since then, what has happened is that the tax revenues have stabilized across the State, but we still are living austere environments. However, based on collective bargaining, many of the collective bargaining units have already received increases in excess of 2% to 3% a year over the past few years and these schedules are going on further. For example, HGEA has gotten a set of increases, UPW has gotten a set of increases including step movements. So raises are being handed out by agreement with the...through that binding arbitration agreement between the collective bargaining units, etc. It's not as if the environment has been now that no other employees are getting raises, but what has happened since those collective bargaining increases have gone into effect with the HGEA, UPW, Fire, Police, the executive salaries have not correspondingly caught up to that, and so you are seeing...for example, in the case of the Fire Department and the Police Department, they no longer have Deputies because the salary for the Deputies is not competitive. So you've seen as people elected to drop back to the collective bargaining scale because of the increases in salary. For example, even in my Department, I have one (1) employee that is now being paid more than the Deputy, currently. With the step increases that tend to occur, in the next round of increases that will come as per the collective bargaining agreement, we'll have three (3) employees that get paid more than my Deputy and one (1) that gets paid just as much as me, so it becomes a retention issue. Also because when you look at Executives, Executives do not get paid overtime. The Civil Service guys do get paid overtime. So it becomes an inversion issue where there's now the separation between what the employees being supervised are getting paid versus those that are supervising, and so you are seeing a reluctance to enter into the managerial levels.

Chair Mahoney: So some of the options...how about a letter from the Commission? Is that up for discussion? Just a consensus on how the Commission feels about addressing...

Mr. Abrams: Mr. Chair, I think that the recommended increases...you know, it ran 1.7, 4.0, 2.0, 1.7, 1.8, 2010 and 2014, which average out to 11.2% total are reasonable, and I think that the Salary Commission's efforts in looking at who was on the Salary Commission that these people know what they are doing and in effect, I would vote and recommend to the Council in this resolution that we support, at least as we see it from our standpoint here, the salary increase for

our Planning Director. And in general, the methodology that they've gone by that I think that makes sense to me, and if they can, they should go ahead and raise the salary.

Chair Mahoney: Any further comment?

Mr. Ho: When would this letter have to be submitted to the Council? By tomorrow?

Mr. Dahilig: By tomorrow, yes.

Mr. Keawe: I agree. I think in order to remain competitive and retain talent, you know, we've got some pretty talented folks in our County and they've got to be paid a living wage, especially living on Kaua'i; it's expensive. So I think that's imperative that we get something to the Council.

Chair Mahoney: Commissioner Ho.

Mr. Ho: Is that...Are they basing it on the cost of living or...?

Mr. Abrams: Yeah, the Honolulu CPI Increases. That's what they have.

Mr. Dahilig: Yeah, so for example, if you see 11.2, many of the increases are based off of...

Mr. Ho: Consumer Price Index?

Mr. Dahilig: Yes, the Consumer Price Index, yeah.

Chair Mahoney: Any other comment? Well, you know, not a raise in seven and a half (7 ½) years, and Commissioner Abrams mentioned, you know, the due diligence put in by the Salary Committee [sic], and to retain the good people that we do have, I think...I'd be willing to go along with a recommendation from the Commission in letter form, if anybody's interested in pursuing it along that line.

Mr. Abrams: Well, I make a motion that we embrace the Salary Commission's 2016 recommendations and as far as we are concerned relative to the Planning Director that we have there, that those increases are appropriate and that we go ahead and let the Council know in their consideration of this resolution.

Mr. Keawe: Second.

Mr. Ho: So because the time is so short, should we...each of us submit our own letter? Rather than one (1) letter from the Commission?

Chair Mahoney: I think one (1) would be (inaudible).

Mr. Keawe: I think one (1) would be good if we could get it done in time.



Mr. Abrams: Well, I think we should have one come from the Commission and if there are individual testimonies that there, then maybe we could go ahead and...I mean, authorize, or I guess at this point right now, you'd be speaking on your own behalf as a member of the Commission, but I want to make sure that the Council understands that this Commission has looked at it and that we think that it's appropriate.

Chair Mahoney: As a body that we agree on this.

Mr. Keawe: Yeah.

Mr. Abrams: Yes.

Chair Mahoney: And if it was one form drafted as a...from the Commission to the Council might be more effective than individual testimony.

Mr. Abrams: Yeah, I agree.

Mr. Keawe: Yeah.

Mr. Ho: I agree.

Chair Mahoney: So if everybody is in agreement.

Mr. Keawe: Yeah.

Chair Mahoney: So is this in...now, there's a motion on the floor and a second, does it need a...

Mr. Dahilig: You can vote.

Chair Mahoney: Yeah. Okay, so any...there's been a motion and a second on the floor. Is there any further discussion on this matter?

Mr. Ho: Who would do the letter?

Chair Mahoney: Well...

Mr. Ho: The attorney?

Mr. Dahilig: I guess one (1) option is you can authorize the Chair to sign the letter and then the attorney can draft a letter for the Chair to sign.

Mr. Abrams: Yeah.

Chair Mahoney: Okay, so can that be amended into the motion? Or does it just...part of the discussion?



Mr. Abrams: Well, let's get this passed and then we'll go ahead and decide how we go about doing that.

Chair Mahoney: Alright. Okay, so first and second, discussion is...any further? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 4:0.

Mr. Abrams: Okay.

Mr. Ho: Second motion would be...

Mr. Abrams: Yeah.

Mr. Ho: Who's going to do it?

Mr. Abrams: Well, I guess the second motion would be that we have testimony drafted up on behalf of the Commission by our counsel and have our Chairman go ahead and sign that and submit it. And that if any one of us want to write a letter on behalf, then you can either get online and do it through online that way, or submit testimony, or go in person tomorrow.

Mr. Dahilig: Yeah.

Mr. Keawe: Yeah, we can go in person, also, right?

Mr. Abrams: Yeah.

Chair Mahoney: Okay, so there's a motion for the...

Mr. Keawe: Oh, yeah, second. Sorry.

Chair Mahoney: Okay, moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) The motion carries 4:0.

Mr. Dahilig: Thank you, Commissioners. Sincerely thank you.

## ANNOUNCEMENTS

### Topics for Future Meetings

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, March 8, 2016.

Mr. Dahilig: Last item up for business. We do have the on-deck sheets. They've been submitted. You'll see that the number of pending applications...many of these are in process, so you'll see that we expect a pretty light load, but we do have some other items regarding permit

modifications that will be coming up before the Commission including the Coco Palms matter, which you just acted on today. The next scheduled Planning Commission meeting will be held in this room on March 8, 2016 at 9:00 a.m.

Chair Mahoney: Okay.

Mr. Ho: Mr. Dahilig, March 8<sup>th</sup> is the next one?

Mr. Dahilig: Yes.

Mr. Ho: And is there one scheduled after that?

Mr. Dahilig: There's one scheduled on, I believe, March 22<sup>nd</sup>.

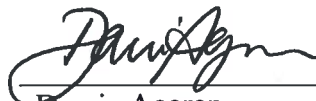
Mr. Ho: Thank you.

Chair Mahoney: Okay, no further business. Meeting adjourned.

### **ADJOURNMENT**

Chair Mahoney adjourned the meeting at 2:03 p.m.

Respectfully submitted by:

  
\_\_\_\_\_  
Darcie Agaran,  
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval)

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.